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Report
100-150

INSPECTOR GENERAL ACT AMENDMENTS OF 1987

REPORT

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

together with

ADDITIONAL VIEWS

TO ACCOMPANY

S. 908

TO AMEND THE INSPECTOR GENERAL ACT OF 1978

August 7 (legislative day, August 5), 1987.—Ordered to be printed

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INSPECTOR GENERAL ACT AMENDMENTS OF 1987

AUGUST 7 (legislative day, AUGUST 5), 1987.—Ordered to be printed

Mr. GLENN, from the Committee on Governmental Affairs,
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 908]

The Committee on Governmental Affairs, to which was referred the bill (S. 908) to amend the Inspector General Act of 1978 (P.L. 95-452, 5 U.S.C. App.) to establish offices of inspector general in four federal agencies, to strengthen the internal audit and investigative capability in thirty-three other federal entities, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

I. SUMMARY AND PURPOSE

The purpose of S. 908 is to improve the ability of the Federal Government to fight waste, fraud and mismanagement in federal programs and operations and to aid Congress' oversight function. To achieve this, S. 908 proposes the creation of new statutory Offices of Inspector General in four federal agencies with important missions or potentially vulnerable programs. These are the Department of the Treasury, the Federal Emergency Management Agency (FEMA), the Nuclear Regulatory Commission (NRC), and the Office of Personnel Management (OPM).

In addition, the bill would strengthen the audit and investigative capability in thirty-three federal entities not now covered by the Act by requiring them to establish internal audit units (a term defined in the bill). The numerous other federal entities would be required to report annually to the Director of the Office of Management and Budget (OMB) on their efforts to ensure audit and investigative coverage of their programs, operations and personnel.

The bill also takes steps to standardize inspector general authorizing legislation and to provide uniform salaries and powers for all of the statutory inspectors general. Moreover, the bill would make changes in the inspector general reporting requirements to ensure that agency heads and Congress receive accurate and reliable information concerning the audit resolution process, and for the first time require periodic reporting to Congress by the agency heads on the implementation of corrective action. Separate appropriation accounts for Offices of Inspector General would also be required.

II. BACKGROUND

A. THE NEED FOR INTERNAL FINANCIAL CONTROL AND AUDIT

The establishment of systems to assure that public funds are legally expended and to assure the economy and efficiency of government operations has occupied the Congress since its inception. Characteristic of the earliest systems were: distribution of duties among several officials prior to disbursement of funds, audit of accounts, and independent authority vested in the Comptroller of the Treasury to settle accounts. As the functions of the new government evolved, Congress provided for audit subsequent to disbursement of funds.[1]

In 1921, the General Accounting Office (GAO) was established, headed by the Comptroller General—the successor to the Comptroller of the Treasury—to independently settle the accounts of the agencies of government.[2]

In the wake of the expansion of government activities, especially during the Second World War, and the several reorganizations of the Executive branch, Congress enacted the Accounting and Auditing Act of 1950.[3] The government had simply become too big for GAO to audit. Accordingly, that Act directs the head of each covered agency to—

> . . . establish and maintain systems of accounting and internal control designed to provide . . . effective control over and accountability for all funds, property, and other assets for which the agency is responsible, including appropriate internal audit . . .

That Act further provides that the accounting systems of covered agencies "shall conform to the principles, standards, and related requirements prescribed by the Comptroller General . . ." In 1957, GAO issued its "Statement of Principles and Concepts of Internal Auditing for Federal Agencies".

Implementation of the Act's directive and GAO's principles was lacking in most agencies. From 1966 through 1970, GAO made reviews of the internal audit functions at nine executive departments and nine major agencies. In most instances, GAO found, the internal auditor was responsible to an official who was also directly responsible for some other agency activities. In a 1970 report summarizing its findings, GAO stated:

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[1] White, Leonard D., *The Federalists, A Study in Administrative History*, Macmillan, New York, 1948, Chapters X, XXVI, and XXVII.

[2] The Budget and Accounting Act of 1921; Public Law 13, 67th Congress, 31 U.S.C. 701, et seq.

[3] Public Law 784, 81st Congress, Title I, Part II; 31 U.S.C. 3501–3514.

> Under these circumstances, the internal auditor could find himself in the position of reporting matters which reflect adversely on activities or operations which are carried out within the responsibility of his immediate supervisor.[4]

In 1976, more than 25 years after enactment of the 1950 law, GAO found that ". . . some agencies still have not established audit groups and others are understaffed." GAO further concluded that:

> The complete or partial absence of internal audit capability means that Federal expenditures in the affected agencies are not being subjected to the important internal control provided by auditors. In addition, opportunities to reduce or eliminate unnecessary or wasteful practices and identify potential cost reductions are being lost.[5]

B. INITIAL RESPONSE TO EXPOSURE OF THE VULNERABILITY OF FEDERAL FINANCIAL SYSTEMS

The vulnerability of the Federal Government's accounting, auditing, and investigative systems to waste and fraud was exposed in 1962 after the arrest of Billie Sol Estes. Over a ten year period Estes had established an empire in cotton allotments and farm storage facilities at the expense of the U.S. Department of Agriculture. In the report of its investigation, the House Committee on Government Operations found that several separate audit or investigative units of the Department of Agriculture had looked into various phases of Estes' questionable activities during the ten year period; however, there was a "serious lack of effective coordination and communication among Federal units engaged in auditing and investigative activities." [6]

In the wake of Estes' arrest, Agriculture Secretary Orville Freeman consolidated all of the internal audit and investigative units within the Department into a single office, the Office of Inspector General (OIG). His action defined the inspector general "concept": the consolidation of an agency's audit and investigative functions and resources under a single high-level official reporting directly to the agency head.

In 1968, GAO conducted a review of the organization and operations of the OIG at the Agriculture Department and reported favorably on most aspects of the OIG. In the same year, GAO issued revised guidelines which recommended that "each department or agency have a single centralized internal audit organization reporting to the agency head or to a principal executive next in line. The intent was to enhance auditor independence and freedom, concentrate efforts, and gain top-level attention to audit findings." [7]

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[4] GAO Views on Internal Auditing in the Federal Agencies, B-132900, 1970, pp. 6-7.

[5] An Overview of Federal Internal Audit, GAO Report/FGMSD-76-50, November 29, 1976, p. 15.

[6] H. Rept. 89-196, "Operations of Billie Sol Estes", March 22, 1965, p. 27.

C. STATUTORILY-ESTABLISHED OFFICES OF INSPECTOR GENERAL

(1) Creation of the First Statutory Inspectors General

The impermanent nature of an administrative Office of Inspector General was demonstrated when, in 1974, Agriculture Secretary Earl Butz abolished the OIG.

Contemporaneously, a congressional investigation of the procedures and resources in the Department of Health, Education, and Welfare (HEW) to prevent and detect program fraud and abuse found that of the Department's more than 110,000 employees, only 10 were employed as investigators in its central investigative unit, which had a ten-year backlog of uninvestigated cases. In addition, other audit units were scattered throughout the agency and their personnel reported to the officials responsible for the programs they audited, offering little assurance that the Secretary would be kept informed of serious fraud and abuse problems in the Department.[8]

Legislation was drafted to establish a statutory Office of Inspector General at HEW. That legislation assigned overall responsibility for coordination and leadership of HEW's audit and investigative activities to a single individual with no program operating responsibilities, reporting directly to the Secretary, and responsible for giving undivided attention to the prevention and detection of fraud and abuse and the promotion of economy and efficiency in HEW's programs and operations. The legislation provided for appointment of the Inspector General (IG) by the President, and directed the IG to report to both the Secretary and the Congress concerning significant problems, abuses, or deficiencies and the progress of corrective action concerning them. In addition, it gave the IG authority to conduct audits and investigations and to obtain the information necessary for this purpose. This legislation became law on October 15, 1976.[9]

Subsequently, in 1977, Congress provided for a statutory Inspector General when it established the Department of Energy.[10]

(2) The Inspector General Act of 1978

The 95th Congress began an inquiry of the audit and investigative capabilities of twelve other federal departments and agencies. The findings were similar to those at HEW. Thus, Congress passed, and President Carter signed into law, the Inspector General Act of 1978,[11] which established Offices of Inspector General in 12 executive departments and agencies. Following on the provisions of the legislation creating the OIG at HEW, the Inspector General Act of 1978:

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[7] Sperry, Roger L., *et al., GAO 1966-1981 An Administrative History, U.S. General Accounting Office, 1981, p. 59.*

[8] H.Rpt. 94-786, "Department of Health, Education, and Welfare (Prevention and Detection of Fraud and Program Abuse)", Jan. 26, 1976, pp. 8-10.

[9] P.L. 94-505, Title II.

[10] P.L. 95-91.

[11] P.L. 95-452, 5 U.S.C. App. 3.

—provided for Inspectors General to be appointed by the President, by and with the advice and consent of the Senate;

—consolidated all of the audit and investigative resources of the agencies under the direction of the Inspector General who reports directly to the head of the agency (or the deputy) and to the Congress;

—authorized the Inspector General to conduct audits and investigations without hindrance throughout the agency, with broad authority to obtain information in aid of such audits and investigations;

—authorized the Inspector General to select, appoint, and employ such employees as necessary to carry out the functions of the Act; and,

—prevented the transfer of program operating functions to the Office of Inspector General.

(3) Other Statutory Offices of Inspector General

The only executive departments not included in the Inspector General Act of 1978 were the State, Treasury, Justice, and Defense Departments.

In the 96th Congress, Congress created a statutory Inspector General position in the State Department as part of the Foreign Service Act of 1980.[12]

In the 97th Congress, legislation was introduced to establish an OIG in the Defense, Treasury, and Justice Departments.[13] The report accompanying the House bill stated that those agencies—

> were not included in the 1978 Act because the Committee felt that some of their activities were sufficiently different from those of the agencies covered by that Act to warrant more extended study than was feasible during the time remaining in the 95th Congress. That study has now been made.[14]

The 97th Congress established a statutory Office of Inspector General in the Department of Defense as part of the Defense Authorization Act for fiscal year 1983.[15]

In addition, other statutory Offices of Inspector General have been created in some of the larger federal agencies, bringing the current total number to 19. Even though every one of these establishments found some "unique" reason to oppose its creation, the Committee knows of no establishment that now advocates the abolition of its statutory OIG.

These Offices of Inspector General have proven successful in detecting and preventing waste and fraud in agency programs as well as recommending methods to improve the economy and efficiency of agency operations. The President's Council on Integrity and Efficiency recently reported that during the last six months of fiscal 1986, the combined efforts of the 19 Inspectors General resulted in recovery to the Treasury of $1 billion, 2,263 successful prosecutions, and 1,145 debarments and suspensions of persons doing business with the Federal Government.

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[12] P.L. 96-465. That Congress also created a statutory OIG when it established the Education Department in P.L. 96-88.

[13] H.R. 2098.

[14] H. Rpt. 97-40, p. 4.

[15] P.L. 97-252, sec. 1117.

(4) Antecedents of S. 908

In the 98th and 99th Congresses, attention began to focus on the quality of audits and investigations in other agencies of the Federal Government, as well as those two executive departments which did not yet have a statutory Office of Inspector General:

- —In 1986, Senator Roth, then Chairman of the Senate Committee on Governmental Affairs, received two reports from GAO assessing the need for statutory Inspectors General at the Justice Department [16] and the Treasury Department.[17]
- —GAO issued two reports, one in 1984 [18] and one in 1986 [19] describing the deficient internal audit capabilities of federal entities without statutory Inspectors General.

These reports assisted in developing bills which were passed by their respective bodies during the 99th Congress.[20] While final action was not achieved, these bills provided the basis for S. 908.

S. 908 was introduced by Senator John Glenn, Chairman of the Governmental Affairs Committee, on April 3 (legislative day, March 30), 1987. S. 908 was co-sponsored by all of the other members of the Committee.

III. Need for the Legislation

A. THE NEED FOR ADDITIONAL STATUTORY INSPECTORS GENERAL

(1) Department of the Treasury

S. 908 would create a statutory OIG in the Treasury Department, the third largest executive department with a fiscal 1987 budget authority of over $6 billion. In April 1981, President Reagan publicly supported the creation of a statutory Inspector General "who will have powers tailored to the specific needs of the Treasury Department." [21] The Committee believes S. 908 meets this objective. GAO strongly supports the establishment of a statutory OIG in Treasury.

This Administration has retreated from its 1981 position, arguing now that Treasury's existing administrative IG has sufficient authority to conduct and supervise internal audits and investigations in the Department. The Committee finds this argument unsupported by the facts.

The Department's non-statutory OIG was established in 1978. Over the years, the Department has transferred into this OIG its various audit and investigative units, except for those located in the Internal Revenue Service (IRS), Bureau of Alcohol, Tobacco and Firearms (BATF), Customs Service, and Secret Service. In fiscal 1986 approximately $5 billion of Treasury's $5.76 billion budget was dedicated to the operation of these four bureaus.[22] Therefore, under Treasury's present organizational structure, the OIG has audit and investigative responsibility over only about 10–11% of the Department's operating budget and staff positions, while the remaining resources are audited and investigated by Internal Affairs/Inspections staffs located within these four bureaus.[23]

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[16] Justice Department: An Assessment of the Need for a Statutory Inspector General, GAO Report/AFMD-86-8, February 24, 1986.

[17] Treasury Department: An Assessment of the Need for a Statutory Inspector General, GAO Report/AFMD-86-3, August 21, 1986.

[18] Status of Internal Audit Capabilities of Federal Agencies Without Statutory Inspectors General, GAO Report/AFMD-84-45, May 4, 1984.

[19] Internal Audit—Nonstatutory Audit and Investigative Groups Need to be Strengthened, GAO Report/AFMD-86-11, June 3, 1986.

[20] H.R. 3077; S. 2005.

[21] Statement on Actions Taken Against Waste, Fraud, and Abuse in the Federal Government, Memorandum from the President, April 16, 1981.

Each such Internal Affairs/Inspections staff must "periodically report to the Inspector General on [its] significant" investigative and audit activities,[24] but otherwise reports all findings and recommendations directly to the head of its bureau. Treasury's current OIG does not receive copies of all audit and investigative reports issued by the bureaus' Internal Affairs/Inspections staffs. Under these circumstances, the current OIG cannot keep the Treasury Secretary fully and currently informed concerning fraud, abuses and deficiencies that cut across all bureaus and offices of the Department. This deficiency is compounded by the fact that the Secretary now receives annual (not semi-annual) reports summarizing the activities of the OIG. Moreover, these summary reports are not required to be transmitted to Congress.

The Committee believes that Treasury, like the 19 federal establishments before it, shares the basic need for the leadership of an independent statutory Inspector General. Such an individual would better assist Treasury's management in making the most efficient and effective use of the resources available for the law enforcement and myriad other missions of the Department. Moreover, the semiannual reports summarizing the Inspector General's audit and investigative activities would aid the Secretary's and Congress' oversight of the Department's operations.

(a) Responsibility for Internal Investigations.—S. 908 would provide Treasury's statutory IG with sole responsibility for internal investigations except for those involving IRS, BATF, Customs Service and Secret Service personnel. Primary responsibility for these investigations remains with the bureau chiefs. This arrangement represents a departure from the traditional inspector general concept.

The Committee recognizes the important missions of these bureaus. Indeed, many of these bureau employees have direct law enforcement responsibilities. Frequently law enforcement activities require use of criminal investigations, sensitive undercover operations, confidential sources and protected witnesses, and intelligence information provided by other federal, state and local law enforcement agencies. In addition, the Secret Service's protection responsibilities involve these same elements.

The Committee also recognizes the sensitivity surrounding internal investigations of personnel affiliated with law enforcement programs. Given these circumstances, S. 908 leaves primary responsibility for investigations of wrongdoing by employees in the bureaus.

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[22] This included $3.8 billion for IRS and $1.2 billion for BATF, Customs Service and Secret Service. Each year, these bureaus account for over 90% of Treasury's personnel strength. Treasury's total full-time equivalent positions in 1986 was 130,770.

[23] Op. cit., fn. 17.

[24] See paragraphs 2(i) and 3(i) of the Department of the Treasury Order, No. 100–02, January 13, 1987 (Appendix A). (Hereinafter "Treasury Order".)

At the same time, S. 908 specifically provides that Treasury's statutory IG shall have oversight responsibility for the internal investigations performed in the bureaus, and the head of each Internal Affairs/Inspections office shall periodically report to the IG on significant investigative activities.

In addition, the bill provides the statutory IG with the authority to conduct the investigation of any officer or employee of the Department if: (1) the Treasury Secretary or the Deputy Secretary requests the Inspector General to conduct an investigation, (2) the investigation concerns senior officers or employees of the Department, or (3) the investigation involves alleged notorious conduct or any other matter which, in the opinion of the Inspector General, is especially sensitive or of departmental significance.[25] These provisions are intended to enable the Inspector General to root out significant fraud and abuse within the Department, including the law enforcement bureaus, and bring such matters to the attention of the Treasury Secretary and Congress. GAO indicated its support for this arrangement.[26]

In the future the Treasury Secretary may determine that all of Treasury's internal investigative functions should be consolidated in the statutory OIG. Pursuant to section 9(a)(2) of the Inspector General Act, the Secretary is authorized to effect the transfer of resources and functions necessary to achieve this consolidation.

(b) Responsibility for Internal Audits.—Efficiency and effectiveness are among the paramount goals of law enforcement. To achieve these goals, S. 908 proposes that Treasury's statutory IG will have sole responsibility for conducting independent, objective audits of Department and bureau programs and operations.

The Committee recognizes that IRS, BATF, Customs Service, and Secret Service have a tradition of operating autonomously, though within the Treasury Department. However, these bureaus account for about 90% of the Department's budget and over 90% of Treasury's personnel. The Committee's intent in including these bureaus' audit functions within the OIG is to enhance auditor independence, concentrate audit resources under one leader, and gain the highest level attention to audit findings and recommendations.

Treasury has objected to this element of S. 908, arguing that it will deprive the bureau chiefs of a vital "management tool" by removing internal auditors from their direction and supervision. This position fails to recognize the importance of independence to the overall effectiveness of the audit function. Without independence, and the appearance of independence, much of the audit function's credibility is lost. This principle is recognized in OMB Circular No. A-73, Revised, June 20, 1983: "Audit is an integral part of the management process. Audit services and reports should be responsive to the needs of management. However, in order to obtain the maximum benefit from audit, agency audit organizations must have a sufficient degree of independence in carrying out their responsibilities." Or, as HHS Inspector General Richard Kusserow stated: "Central [to the IG concept] was . . . independence from agency control and pressures." [27]

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[25] The statutory IG's authority in this regard would be identical to that currently provided to the non-statutory IG. See paragraphs 2 (c), (f), and (h) of Treasury Order (Appendix A).

[26] Hearing before the Committee on Governmental Affairs on S. 908, Inspector General Act Amendments of 1987, May 12, 1987 [Transcript, pp. 45–46] (Hereinafter "May 1987 Senate Hearing".)

Under Treasury's current arrangement, audit units are located organizationally under the same bureau chief who is ultimately responsible for the programs being audited. This official also has authority for final disposition of audit findings. The Committee finds this arrangement unsatisfactory.

According to GAO, this structure lacks the necessary "organizational independence" required by generally accepted government auditing standards; [28] and, this may inhibit the units from making objective assessments on their audit findings.[29] Under S. 908, the credibility of the audit function in the Department will be improved because the statutory IG, and not the bureau chiefs, will be ultimately responsible for the auditors' paychecks and promotions.[30]

Under the leadership of the Inspector General, the auditors will perform comprehensive audits of programs and operations. This may involve examining financial statements and reviewing compliance with applicable laws and regulations, economy and efficiency of operations, and effectiveness in achieving program results. Not every audit will require all of these elements to be performed.[31] Most importantly, these audits will not be limited solely to activities approved for review by program managers, but may encompass all activities within the Department.

At the same time, S. 908 permits Treasury's IG substantial latitude in deploying audit resources. Moreover, nothing in this plan would foreclose arrangements to expedite independent, objective audits in program areas where the bureau chiefs have particular concerns. The Committee intends that the IG remain responsive to the audit needs of the heads of the IRS, BATF, Customs Service and Secret Service.

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[27] Hearing before the Committee on Governmental Affairs on Inspector General Operations and Needs, February 19, 1987, p. 36. (Hereinafter "February 1987 Senate Hearing".)

[28] The Comptroller General's "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions", Rev. 1981, at p. 19, provide: "To help achieve maximum independence, the audit function or organization should report to the head or deputy head of the government entity and should be organizationally located outside the staff or line management function of the unit under audit."

(Hereinafter "Comptroller General Standards".) The "government entity" here is the Treasury Department.

[29] February 1987 Senate Hearing, p. 103.

[30] Treasury's objections to the consolidation plan are similar to the objections raised by the Department of Transportation (DOT) in 1978. The original Inspector General bill (H.R. 8588) proposed to transfer all of the audit and investigative functions from DOT's constitutent agencies—e.g., Federal Aviation Administration, Federal Highway Administration and Urban Mass Transportation Administration—into the proposed statutory OIG. OMB recommended transfer only of the Department-level audit and investigative resources "to accommodate the unique missions and functions of the individual constituent agencies of that department." Letter from James M. Frey to Chairman Abraham Ribicoff, June 13, 1978, Hearing before the Subcommittee on Governmental Efficiency and the District of Columbia of the Senate Committee on Governmental Affairs on H.R. 8488, June 14, 1978, pp. 13–14.

The Committee rejected OMB's recommendation. S. Rpt. 95–1071, p. 39. The Committee is not aware of any problems encountered by DOT's "constituent agencies" as a result of the DOT IG's authority to audit and investigate their programs and operations. The Committee notes that the DOT IG also has authority to conduct audits and investigations of the Coast Guard, an agency with sensitive military and law enforcement responsibilities.

[31] Comptroller General Standards, p. 12.

On this issue, the Committee finds helpful the guidance provided by the President's Council on Integrity and Efficiency, created by Executive Order in 1981 and whose membership includes the nonstatutory IG at Treasury:

> The IGs act as independent factgatherers, with no vested interest in particular programs or operations, often perform services at the request of the agency head, and serve as technical advisors in such areas as financial management systems and internal controls.
>
> Inspectors General work cooperatively with other organizations in order to accomplish their missions, except when such a relationship would compromise OIG independence. Often they develop close working relationships with the major components of their departments in order to coordinate efforts and to combine expertise shared by both groups. As part of these close working relationships, program managers are frequently involved in the formulation of the OIG workplan and may request specific audits, investigations or studies be done by the IG.[32]

(c) Internal Revenue Service.—IRS' mission is to collect the proper amount of tax revenue at the least cost to the public, and in a manner that warrants the highest degree of public confidence in its integrity, efficiency, and fairness. Each year, IRS accounts for approximately two-thirds of Treasury's budget. For fiscal 1986, this amounted to $3.8 billion. IRS also employs nearly 80% of Treasury's employees.[33] According to the Treasury Department, there are presently 448 auditors in IRS' Office of Inspections who are engaged in internal audit activities.[34] S. 908 would not affect those employees in the IRS who "audit" tax returns to determine tax liability.

Given its size and the importance of its mission, the Committee included IRS in the plan to consolidate all of Treasury's internal audit resources in the statutory OIG. The Committee finds there is no reason to treat IRS differently from the other bureaus.

Nothing in this arrangement will prevent the Commissioner of IRS from requesting the OIG to conduct independent and objective audits of IRS programs and operations. The IG should cooperate in handling such requests. It is expected that the statutory IG's audit findings and recommendations will aid the Commissioner's management of IRS' resources. Such reviews may locate problems that the IG has already identified in the Department's other offices and bureaus. Information about these problems will aid the Treasury Secretary, who has the overall responsibility to manage Treasury's $6 billion budget. The Department's designated follow-up official[35] will oversee the Commissioner's progress in implementing the agreed upon corrective action.

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[32] February 1987 Senate Hearing, p. 112.

[33] Op. cit., fn. 17.

[34] According to Treasury, in the Internal Affairs/ Inspections offices located in the other three bureaus, the number of internal auditors totals 84.

[35] Required by OMB Circular No. A-50, Revised, September 29, 1982. This individual must be a "top management official", personally responsible for ensuring that corrective actions actually are taken.

Nothing in this plan is intended to deny to the Commissioner (or any other bureau chief) the authority to hire and deploy employees to perform functions integral to the day-to-day administration of programs and delivery of services. These employees, members of the program operating team, may assist in identifying problems and suggesting changes in operations both before and after the problems develop. These employees would not be expected to have the independence of a statutory IG.

Treasury has acknowledged that the creation of a statutory OIG at Treasury would result in no increased risk of public disclosure of sensitive taxpayer return information. Current law governing access to and disclosure of tax returns and return information would continue to protect such information.[36] Section 5(e)(1) of the 1978 Inspector General Act specifically prohibits an Inspector General from disclosing to the public any information which is specifically prohibited from disclosure by any other provision of law.

As an extra measure against unwarranted disclosure, the Committee also included in S. 908 an amendment to section 5(e)(3) of the Act. Section 5(e)(3) delineates Congressional access to information from the Inspectors General. The amendment incorporates a reference to section 6103(f) of the Internal Revenue Code (IRC), which governs disclosure of tax returns and return information to Committees of Congress.

(d) Sensitive Information.—The Inspector General Act of 1978 places the Inspector General under the "general supervision" of the agency head, or deputy head. These individuals may not prevent the IG from initiating, carrying out, or completing any audit or investigation. In conducting the audit or investigation, the IG is authorized access to the records and documents available to the agency relating to its programs and operations.[37]

No problems concerning the IGs' access to or use of classified data have been brought to the attention of the Committee. Since the Act requires that IGs be selected by the President on the basis of their integrity and demonstrated ability, there is no reason to believe that an IG is less trustworthy than other agency officials in handling sensitive information. The Act does not require that sensitive information be included in the semi-annual reports of the IGs. Indeed, section 5(e)(1) of the Act prohibits public disclosure of certain types of sensitive information.

The Treasury Department has expressed great concern that the statutory IG would, through the conduct of audits and investigations, attempt to insert the OIG into the Department's policy-making process. Treasury poses the possibility of the disruption of financial markets which are sensitive to Treasury policy-making. Treasury would have the Committee prohibit the statutory IG from reviewing, except as authorized by the Secretary, the "formulation" of policy, although Treasury acknowledges the IG's authority to review policy "execution".

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[36] 26 U.S.C. sections 6103 and 7213.

[37] See sections 3(a) and 6(a)(1) of the Inspector General Act of 1978. Similar authorities are currently available to Treasury's non-statutory IG: "No officer or employee of the Department shall prevent the Inspector General from initiating, carrying out, or completing any duly authorized audit or investigation, or prevent any appointed officer or employee of the Office of the Inspector General from obtaining access to any information or documentation which the Inspector General has determined is necessary to the execution of an audit or investigation." See paragraph 1(e) of Treasury Order (Appendix A).

The Committee is unpersuaded by Treasury's argument in support of its proposal for the following five reasons:

1. It seeks to prohibit the statutory IG from reviewing matters that are not off-limits to Treasury's non-statutory IG.[38] Indeed, Treasury has not identified one instance during the past nine years when the activities of the non-statutory IG have interfered with the Department's policy-making or caused a disruption of financial markets.

2. It is unworkable. Treasury has suggested no working definition of policy "formulation". The Committee finds that there is no bright line signalling the end of policy "formulation" and the beginning of policy "execution". As a result, Treasury's suggested approach could be used to bar the statutory IG from reviewing every facet of the Department's operation.

3. It has no precedent. Among the 19 statutory Offices of Inspector General currently established in executive departments and agencies—including the Defense and State Departments—none are proscribed in this manner.

4. It is unnecessary. Broad as it is, the IG's mandate is not unlimited. The stated purpose of the Inspector General Act is to create an independent and objective unit to "provide leadership and coordination and recommend policies for activities designed (A) to promote economy, efficiency, and effectiveness in the administration of, and (B) to prevent and detect fraud and abuse in, [the affected agency's] programs and operations . . ." Over the past nine years, the 19 statutory IGs have demonstrated their commitment to carrying out this mission without adversely affecting the agency heads' ability to run their agencies.[39]

5. It jeopardizes the IG's ability to investigate individuals who may have violated laws and regulations or otherwise engaged in misconduct while participating in policy "formulation". For example, the IG should properly be concerned about investigating "allegations that an Assistant Secretary is making decisions which are influenced by a financial conflict of interest . . ."[40]

The Committee notes that in 1982, Congress crafted for the Department of Defense (DOD) a special provision—set forth in section 8 of the Inspector General Act—which places the IG under the "authority, direction, and control" of the DOD Secretary with respect to audits or investigations which require access to certain specified matters. With respect to this information, the DOD Secretary may prohibit an audit or investigation if the Secretary determines it is necessary to preserve the national security interests of the United States. Built into this approach is a requirement that if the DOD Secretary exercises any of these powers, Congress will be notified.

The Committee included a provision in S. 908 which, patterned after the DOD provision, places the Treasury IG under the "authority, direction, and control" of the Treasury Secretary with respect to IG audits or investigations which require access to certain sensitive matters. With respect to this information (discussed further below), the Treasury Secretary is authorized to prohibit an audit or investigation when the Secretary determines it is necessary to preserve its confidentiality or prevent its disclosure. If the Treasury Secretary exercises any of these authorities, Congress will receive notice.

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[38] As recently as January 1987, the Treasury Secretary did not impose such a limitation on Treasury's non-statutory IG. See Treasury Order (Appendix A).

[39] Testimony of John J. Adair, Associate Director, Fraud Prevention and Audit Oversight Group, GAO, February 1987 Senate Hearing, p. 29.

[40] S. Rept. 95-1071, p. 27.

The list of sensitive matters includes: (A) ongoing criminal investigations or proceedings, (B) sensitive undercover operations, (C) the identity of confidential sources, including protected witnesses, (D) deliberations and decisions on policy matters, including documented information used as a basis for making policy decisions, the disclosure of which could reasonably be expected to have a significant influence on the economy or market behavior, or (E) other matters the disclosure of which would constitute a serious threat to national security or to the protection of any person authorized protection by section 3056 of title 18, United States Code.

Much of this sensitive information relates to law enforcement operations carried out by the bureaus. These operations, as well as activities of the Secret Service in carrying out its protection duties, commonly involve the use of criminal investigations, undercover operations, confidential sources, and intelligence information supplied by other federal, state and local law enforcement agencies. The Secretary's control over the IG's audits or investigations requiring access to these matters will safeguard against inadvertent disclosure of any information that may jeopardize law enforcement personnel, compromise law enforcement operations, or endanger the lives of any persons authorized Secret Service protection.

This list also includes language relating to Treasury's policy decisions, the disclosure of which could affect the financial markets which are sensitive to those decisions. Treasury has previously indicated its decisions "involve complex analysis and forecasting, as well as expert judgments and opinions that are based upon sensitive fiscal and public policy considerations." [41] Accordingly, the statutory IG would also come under the Secretary's control with respect to audits or investigations requiring access to deliberations and decisions on policy matters, the disclosure of which could reasonably be expected to have a significant influence on the economy or market behavior.[42] This will adequately guard against inadvertent disclosure of information about the policy-making process, the policy decisions themselves, and the documented information used in making such decisions.

Finally, the list includes language relating to other matters the disclosure of which would constitute a serious threat to national security or the protection of any person authorized Secret Service protection. Treasury's responsibilities in the United States national intelligence effort are set forth in Executive Order No. 12333 and Executive Order No. 12334.[43] The information collected through

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[41] Op. cit., fn. 17.

[42] The term "market behavior" would encompass the effect on institutions such as the stock, bond, or other financial markets due to the inadvertent public release of sensitive policy information by the IG. It could also encompass the expected reaction in those instances where an individual making investment decisions or otherwise participating in those markets was provided sensitive information in advance of disclosure to the other investors.

[43] Both Orders are dated December 4, 1981.

Treasury's intelligence and counterintelligence activities is essential to the national security of the United States, and the protection of persons authorized Secret Service protection.

The Committee notes that pursuant to Executive Order No. 12334, Treasury's IG has responsibility for reporting to the President's Intelligence Oversight Board concerning intelligence activities that may be unlawful or contrary to Executive Order or Presidential directive.[44] The creation of a statutory OIG within Treasury does not affect the IG's current authority under the Executive Order to perform these duties.

The Treasury Secretary's decision to assert control over or prohibit an audit or investigation shall be made on a case-by-case basis. In that event, the Secretary shall notify the Inspector General in writing of this action. The IG shall then transmit a copy of such notice to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House, and to other appropriate committees and subcommittees of Congress, together with any comments the Inspector General deems appropriate. These notice requirements are intended to minimize the possibility of inadvertent disclosure of information deemed sensitive by the Treasury Secretary and, they are consistent with the notice requirements applicable to the Secretary of Defense.

(2) Federal Emergency Management Agency

S. 908 would established a statutory Office of Inspector General in FEMA. Both GAO and OMB testified in support of this change, and FEMA has voiced no opposition.

In fiscal 1986, FEMA had an estimated buget authority of $121 million and an estimated staff size of 2,200. FEMA's resources are devoted to managing the President's Disaster Relief Fund, the National Flood Insurance Fund, emergency food and shelter funds, and similar programs. GAO reports that these important and vulnerable programs and activities have received little or no audit coverage largely because, according to FEMA audit officials, the agency's non-statutory OIG lacked adequate staffing resources.[45]

This non-statutory OIG was established when the agency began operations in 1979. In addition to the lack of resources, there is other evidence that this OIG has received little support from agency management over the years. GAO testified that one former non-statutory Inspector General experienced an impairment to his independence when he was asked to transfer to another position after conducting sensitive investigations involving high-level FEMA officials.[46]

(3) Nuclear Regulatory Commission

The NRC is the independent agency responsible for regulating the commercial use of nuclear power in the United States. According to Chairman Lando W. Zech, Jr., its mission is to protect the public health and safety, the common defense and security, and the environment.[47]

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[44] At present, Treasury's non-statutory IG has responsibility for this and other intelligence activities. See paragraph 4 of Treasury Order (Appendix A).

[45] February 1987 Senate Hearing, p. 105.

[46] Ibid.

To monitor the effectiveness, efficiency and integrity of the programs and personnel dedicated to carrying out the agency's mission, the NRC created an Office of Inspector and Auditor (OIA) in 1975. The Director of OIA is appointed by and reports to the five-member Commission. OIA is intended to perform the essential functions of a statutory Office of Inspector General by providing the Commission with objective information on problems within the agency discovered through OIA's audits and investigations.

Equally important is the need for the Commission to know about the trustworthiness and integrity of its licensees, their employees and others in the regulated industry (hereinafter referred to as "licensees"). These licensees carry out many activities that the Commission does not have the resources to review. If licensees willfully fail to comply with NRC requirements or intentionally supply the NRC with incomplete or inaccurate information, that subverts the whole regulatory process now in place. Thus, uncovering wrongdoing and taking strong civil enforcement action against such parties is essential to ensuring the integrity of the regulatory process.

The NRC's Office of Investigations (OI) was created in 1982 to investigate licensee wrongdoing of this type. The OI Director is appointed by and reports to the Commission. If OI investigations also indicate the possibility of criminal violations, that evidence is to be referred to the Department of Justice.

The continuing controversy over the relative safety of commercial nuclear energy and the competence and effectiveness of the NRC in regulating that industry argues for a strong and independent OIA and OI. However, the Committee finds that current NRC operations in this regard are deficient. Specifically, contrary to the NRC's contention, OIA has not performed its duties with competence and without interference from senior NRC management. Moreover, policies proposed and adopted by the Commission have limited OI's ability to detect and disclose wrongdoing by NRC licensees and, when appropriate, refer such matters to the Department of Justice. To enhance the public's trust in the NRC's regulatory capability, S. 908 incorporates GAO's recommendation for the establishment of a statutory OIG.[48]

(a) Transfer of the Office of Inspector and Auditor.—The bill would establish a statutory OIG and transfer OIA into it. Although a majority of the current Commissioners believe this change is unnecessary (Commissioner Bernthal dissenting), the NRC acknowledges the considerable support for this idea in Congress.[49]

At present, OIA lacks the permanent status afforded to a statutory OIG. OIA could be disestablished by a majority vote of the five-member Commission. Moreover, the OIA Director is appointed by and serves at the pleasure of the Commission. Congress need not be notified in the event the Commission votes to remove the Director. In contrast, a statutory Inspector General for the NRC would be appointed by the President, by and with the advice and consent of the Senate, and could be removed only by Presidential action, with notice to Congress. With these protections, a statutory Inspector General at the NRC would be able to thoroughly investigate allegations of employee misconduct or mismanagement without fear of removal by the Commission.

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[47] Hearing before the Committee on Governmental Affairs on The Need for an Inspector General at the NRC, April 9, 1987, [Transcript, p. 10] (Hereinafter "April 1987 Senate Hearing".)

[48] February 1987 Senate Hearing, p. 106; May 1987 Senate Hearing [Transcript, pp. 46–47]; Improvements Needed in the Nuclear Regulatory Commission's Office of Inspector and Auditor, GAO Report/EMD-81-72, July 9, 1981.

[49] Letter from NRC Chairman Lando W. Zech, Jr. to Chairman John Glenn, Senate Governmental Affairs Committee, June 1, 1987.

This is no trivial matter. Despite the NRC's assertions to the contrary, the Committee finds that OIA has not performed all of the essential functions of a statutory OIG. For example, it is clear that evidence of potential wrongdoing by a Commissioner or employees in his office was intentionally withheld from OIA in 1985.[50] This episode demonstrates the NRC's need for a truly independent Inspector General, with the authority and expertise to investigate potential wrongdoing wherever it occurs, even if it involves a Commissioner's office.

At its April 9th hearing, the Committee heard disturbing testimony from NRC Commissioners and employees that serious deficiencies in OIA's objectivity and investigative practices have compromised the credibility of that office. Then Commissioner Asselstine testified that he had great difficulty in convincing agency employees to report their concerns about senior NRC Staff managers to OIA because they did not trust that office to do an adequate job. Moreover, this lack of credibility is not simply a problem with OIA's current management; rather, the problem goes back over several years.[51]

(3) Transfer of the Office of Investigations.—The bill would also transfer OI into the statutory OIG. Though the NRC opposes this initiative, the Chairman has indicated that this approach is one which could be made to work.[52]

Until 1982, the NRC had no special office charged with investigating persons in the commercial nuclear industry who intentionally violate Commission regulations and license conditions, falsify records, lie, or otherwise manifest serious deficiencies of character to handle hazardous nuclear materials or to operate nuclear plants.[53] To correct this deficiency, the NRC created OI, staffed by trained investigators. From the beginning, the NRC intended that when these investigations indicated the possibility of criminal misconduct, OI would make appropriate referrals to the Department of Justice.[54]

Like OIA, OI is not a statutory office. It enjoys no statutory protections. It depends upon a majority of the Commission to recognize that its continued existence helps assure the public that the NRC is truly interested in uncovering wrongdoing and enforcing its regulations. It depends upon a majority of the Commission to recognize that the credibility of OI is keyed to its independence from the

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[50] April 1987 Senate Hearing [Transcript, pp. 25–33, 82–89]. See Case Study No. 1 (Appendix B).

[51] April 1987 Senate Hearings [Transcript, pp. 17, 33–37, 89–93, 136–59]. See Case Study No. 2 and 3 (Appendix B).

[52] Op. cit., fn. 49.

[53] April 1987 Senate Hearing [Transcript, pp. 10–11].

[54] April 1987 Senate Hearing [Transcript, p. 11].

NRC's regulatory Staff, supervised by the Executive Director for Operations (EDO).

At its April 9th hearing, the Committee heard disturbing testimony about Commission and EDO actions regarding OI. Their effect has been to limit OI's independence and effectiveness, and, in some cases, they have strained the NRC's important relationship with the Justice Department (DOJ). For example, on several occasions since 1982, the Commission has considered a plan to have OI report to the EDO.[55] A 1985 proposal was opposed by DOJ on the ground that:

> Prior to and since the creation of OI there has been some opposition as well as resistance within the NRC to the detection and disclosure of deliberate wrongdoing by NRC licensees . . . Senior personnel within the NRC who could affect or influence OI's ability to detect and report violations if it were realigned may have contributed to this problem.[56]

OI depends on the NRC Staff to report to it potential wrongdoing by licensees. In 1986 the NRC established "threshold" limitations for Staff referrals to OI. In addition to finding a reasonable basis for belief of wrongdoing, the Staff must determine that there is a regulatory need for the OI investigation.[57] This standard suggests that the Staff is the exclusive authority to determine "regulatory need" for OI investigations. This standard, and other Commission-level actions [58] have called into question OI's ability to self-initiate cases, thereby jeopardizing OI's usefulness.

To achieve uniformity in ensuring that these "threshold" limitations are met, the EDO proposed and the Commission agreed to establish the Investigation Referral Board (IRB) to function as a screening board for referrals to OI. This was done over the objection of Commissioner Asselstine, who saw the IRB as "a thinly veiled attempt by the EDO to control OI by controlling what referrals are made and thus what OI investigates. . . . The staff should not be performing investigations of wrongdoing. The staff's lack of expertise in this area and its inability to produce credible investigation reports is what led to the formation of OI in the first place." [59] The Committee finds that during the first five months of its existence, there was a dramatic downturn in the number of wrongdoing matters referred by the NRC Staff to OI for investigation.[60]

This program is compounded by the NRC's limitation on the authority of OI to initiate investigations solely regarding the "character and competence" of licensees. In those cases, OI is required to make a recommendation to the Commission as to whether the investigation is warranted, and then be guided by a majority vote of the Commission as to whether or not to open the case. On one occasion in 1984, the Commission refused to authorize an investigation involving serious alleged character flaws in senior licensee officials.[61]

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[55] April 1987 Senate Hearing [Transcript, p. 100].

[56] Letter from Stephen S. Trott, Assistant Attorney General, Criminal Division, Department of Justice to Nunzio J. Palladino, Chairman, NRC, March 18, 1985. To date, the Commission has not agreed to proceed with any of these proposals.

[57] "Guidance for Initiation, Establishment of Priorities and Termination of Investigation," Appendix to SECY-85-369, January 10, 1986.

[58] April 1987 Senate Hearing [Transcript, pp. 98-99]. Commissioner Roberts has indicated that he favors repealing the authority of OI to initiate an investigation without the concurrence of either the Commission or its regulatory staff. See Memorandum from Samuel J. Chilk, Secretary, to Commissioner Asselstine/COMJA-86-1, February 10, 1986.

[59] Memorandum from James K. Asselstine to Chairman Zech/COMJA-86-10, September 24, 1986.

[60] April 1987 Senate Hearing [Transcript, pp. 40-41, 95-96].

The Committee believes that these limitations have compromised OI's independence and effectiveness. The safety of the industry depends on licensee trustworthiness and integrity. The NRC cannot adquately carry out its mission if licensees intentionally undermine the process. Uncovering wrongdoing and taking strong civil enforcement action based on a well-developed OI report has a deterrent effect not only on the licensee in question but on other licensees as well. Moreover, since OI investigations involve wrongdoing, there is often the potential that a licensee's actions, if proven, might also be a violation of federal criminal statutes. While civil enforcement action for wrongdoing has a deterrent effect, the possibility of criminal enforcement action has an even greater deterrent effect.

In those cases where a licensee's conduct might also be a violation of criminal statutes, the Committee believes the Commission has a responsibiliity to refer those cases to DOJ, and provide continued assistance to DOJ if requested. Most of these referrals involve alleged "material false statements" made by licensees. At the time of the Committee's April 9th hearing, the Commission required that all cases involving "material false statements" be reviewed by the Commission before referral to DOJ, and that all referrals required consultation with the NRC Office of General Counsel. Though these obstacles have since been lifted, the NRC has stated that it retains the authority not to refer cases of wrongdoing to DOJ.

The Committee finds that OI's functions are consistent with the Inspector General Act of 1978. To protect the integrity of OI's investigations and ensure that the NRC will pay sufficient attention to the character and integrity of its licensees, the Committee concludes that the only solution is to make OI a part of the new statutory OIG. This will ensure that OI's activities will be supervised by the NRC's Chairman, and investigation results will be reported directly to the Chairman, and when appropriate, the Justice Department.[62]

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[61] April 1987 Senate Hearing [Transcript, pp. 97-99].

[62] There is precedent for protecting OI's function in this fashion. The legislative history of the Inspector General Act of 1978 shows that at the time the statutory OIG for the Department of Labor was created, Congress transfered to that office the responsibility for investigating labor-management racketeering, a function previously performed by a unit in the administratively-established Office of Special Investigations. This transfer was justified on the ground that there were "shocking deficiencies in Labor Department efforts to combat labor-management racketeering." Testimony of Congressman L.H. Fountain before the Subcommittee on Governmental Efficiency and the District of Columbia of the Senate Committee on Governmental Affairs, June 14, 1978, Transcript, p. 6.

(4) Office of Personnel Management

S. 908 would establish a statutory Inspector General in OPM. Both OMB and GAO support this initiative, and OPM itself has stated that it has no strong objection.

In testimony before the Committee concerning its recent review of OPM's current organization and the functions of the existing audit and investigative units, GAO suggested changes in the bill's provisions transferring certain of these units into the proposed statutory OIG.[63] GAO recommended that, in addition to the non-statutory OIG, the Insurance Audits Division, located within OPM's Retirement and Insurance Group, and the Analysis and Evaluation Division, now part of the Administration Group, be included in the transfer. Both of these Divisions were previously part of OPM's non-statutory OIG. In fact, OPM officials advised GAO that they are now considering moving the Analysis and Evaluation Division back into that office. Taking this into consideration, the Committee amended the bill to propose the transfer of all three unit recommended by GAO.

OPM objected to the transfer of the Insurance Audits Division, which is responsible for audits of contractors providing health and life insurance to federal employees, and which was part of the non-statutory OIG until 1986. However, the Committee agrees with GAO's assessment that the Insurance Audits Division currently lacks organizational independence. The head of the Insurance Audits Division reports to the same OPM Associate Director who is ultimately responsible for negotiating and monitoring contracts with the insurance carriers. However, the Comptroller General Standards require that, for an internal audit function to be considered independent, it should report to the highest level within the agency, in this case, the OPM Director.

A more persuasive case was made by GAO and OPM to amend the bill to exclude the Program Integrity Section, also located within the Retirement and Insurance Group, from transfer into the statutory OIG. This unit assists management in carrying out program operating functions. Although the Committee amended Section 4's provision concerning OPM to exclude transfer of this unit, it is expected that the Inspector General will have the authority and sufficient resources to evaluate significant fraud problems in the retirement programs.

B. REQUIREMENTS AND PROTECTIONS FOR AUDIT AND INVESTIGATIONS UNITS

Section 5 of the bill applies the inspector general concept to 33 designated Federal entities.[64] The 33 designated Federal entities either have budget authority or program expenditures of $100 million or more, or are independent regulatory agencies. Other Federal entities would be required to report to OMB annually on their audit and investigative coverage.[65]

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[63] May 1987 Senate Hearing [Transcript, pp. 47-49].

[64] For the definition of "designated Federal entity", see Sec. 8D(a)(2) as added by sec. 5(a) of S. 908, as reported.

[65] For the definition of "Federal entity", see Sec. 8D(a)(1) as added by sec. 5(a) of S. 908, as reported.

(1) Background: The Dearth of Audit and Investigative Coverage

Beyond the nineteen executive departments and federal agencies which already have statutory Offices of Inspector General (plus the four which would be established by this bill), there are over 90 entities in the Federal Government with combined budget authority (either direct appropriation, borrowing authority, or limit on expenditures) of over $6 billion and full-time equivalent employment of over 800,000 (of which 740,000 belong to the U.S. Postal Service).[66]

Since the enactment of the Inspector General Act of 1978, both the Carter and Reagan Administrations have issued directives designed to provide strong internal audit and investigative coverage in agencies without statutory IGs.

On December 13, 1978, President Carter issued a memorandum to the heads of executive departments and agencies directing that significant features of the inspector general concept be extended throughout the Federal Government.[67] On January 3, 1979, the Director of OMB sent a follow-up memorandum asking the agency heads to designate a single official accountable directly to them to "monitor the implementation of the plan to assure that your agency adheres to the same rigorous standard of audit and investigative efforts that we are expecting from the Inspector General agencies." [68]

On June 20, 1983, OMB issued a revised Circular to heads of executive departments and agencies on policies to be followed in the audit of federal operations and programs. The Circular repeated the previously stated policy that, "Agencies are responsible for providing adequate audit coverage of their programs . . ." The Circular specified that the audit organization should be located outside the staff or program management structures of activities subject to audit and that it report to the head or deputy head of the agency.[69]

Nevertheless, deficiencies remain in the audit and investigative activities of federal agencies which do not have statutory Inspectors General.

A May 1984 GAO report, based upon a survey of the internal audit capabilities of 99 federal entities without statutory Inspectors General, concluded that:

> . . . some agencies are not complying with OMB Circulars A-50 and A-73, which address audits of federal operations and programs and audit followup; and with GAO's "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions." Some agencies have no audit coverage; at others the internal auditor does not report to the head or deputy head of the agency; and at several

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[66] See Chart No. 1 (Appendix C).

[67] Waste, Fraud, and Error in Government Programs, Memorandum from the President, December 13, 1978.

[68] Steps to Eliminate Waste, Fraud, and Error in Government Programs, Memorandum for the Heads of Executive Departments and Agencies from James T. McIntyre, Jr., January 3, 1979.

[69] OMB Circular No. A-73, Revised, June 20, 1983.

agencies that have more than one audit or investigative unit, there are no procedures for coordination.[70]

Of the 99 agencies surveyed by GAO, 44 were found to have an internal audit unit, while 20 reported no audit coverage. The other 35 agencies were serviced by external auditors.

A follow-on review by GAO of 41 of those agencies that had audit and/or investigative units ". . . uncovered many of the same problems that prompted Congress to establish statutory Inspectors General in other agencies, including:

—a lack of audit independence at many agencies because auditors were under the supervision of officials directly responsible for activities subject to audit;

—inadequate audit coverage of important and vulnerable agency operations;

—lack of evaluation of significant fraud problems by internal audit/investigative staffs; and,

—audit resolution and follow-up systems that did not meet governmental requirements." [71]

(2) Development of a Legislative Solution

In 1986 Senator Roth, then Chairman of the Governmental Affairs Committee, asked the President's Council on Integrity and Efficiency (PCIE) to study the extent and effectiveness of small agency audit and investigative activities and to recommend the most appropriate and efficient methods of ensuring that adequate audits and investigations are carried out at those agencies. In developing those recommendations, the PCIE was asked to consider the extent to which the authorities and responsibilities specified in sections 4 through 7 of the Inspector General Act should be provided to those agencies.

The results of the PCIE study, presented to the Committee in May 1987 by the Department of Commerce IG Sherman Funk, built upon the factual foundation prepared by GAO and confirmed GAO's findings of deficiencies in audit and investigative coverage. Specifically, PCIE found that: half of the internal audit units that now exist are not organizationally independent; audit coverage by those units is "limited and sporadic"; and, there is a little internal investigative work. Perhaps most important was PCIE's reminder that, without statutory underpinning, internal audit units lacked permanence. Yet, PCIE also concluded that many agencies are too small to require a permanent, full-time, internal auditor.

Accordingly, the PCIE recommended a two-tiered approach to assure audit and investigative coverage in the smaller agencies:

—In 31 agencies which have budget authority of more than $100 million or which are regulatory in nature, an IG-like, consolidated audit and investigative function should be statutorily established.

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[70] Status of Internal Audit Capabilities of Federal Agencies Without Statutory Inspectors General, GAO Report/AFMD-84-45, May 4, 1984.

[71] Hearing before the Committee on Governmental Affairs on the President's Management Legislative Initiatives, February 26, 1986, pp. 144-145 (Hereinafter "1986 Senate Hearing"); Internal Audit—Nonstatutory Audit and Investigative Groups Need to be Strengthened, GAO Report/AFMD-86-11, June 3, 1986.

—For each of the other agencies, a cognizant statutory inspector general should be designated to be responsible for providing reimbursable audit and investigative coverage to each agency for which cognizance is assigned.

Expanding on the PCIE's recommendations, Inspector General Funk, in testimony before the Committee, made the following points:

—Of the 31 agencies in which PCIE would recommend the establishment of an internal audit unit, only 5 currently do not have an internal audit unit.

—Regarding independent regulatory agencies, some of those agencies had budgets substantially less than $100 million. "However," Funk stated, "in view of the sensitivity of their work, and the paramount need to assure the continuing integrity of their staffs and operations, we believe that all of the regulatory agencies warrant inclusion in this recommendation, regardless of their size."[72]

—Regarding application of sections 4 through 7 of the Inspector General Act to the internal audit units in those 31 agencies, the PCIE stated that "full compliance with all of the sections of the IG Act . . . may well impose . . . an excessive administrative burden." For example, the PCIE cited the semi-annual reporting requirements, and the subpoena and hiring authorities. But, in response to questions, both OMB Deputy Director Wright and Inspector General Funk agreed that these agencies should have the subpoena power provided in the Inspector General Act.

—Regarding the establishment of cognizant relationships, the PCIE mentioned a number of items to be considered in designing the plan, including the criteria for matching particular small agencies with particular Inspectors General; the designating authority (Congress or OMB); and, the need to clarify the Inspector General Act so that the Inspectors General could exercise their authorities in the small agencies over which they would have cognizance.

After review of the results of the PCIE study, and the testimony received by the Committee from OMB, Inspector General Funk, and GAO, the Committee amended Section 5 of the bill to provide the following:

—Section 5 mandates the establishment of internal audit units in 33 designated Federal entities.[73] Those entities comprise the independent regulatory agencies and those agencies with budget authority or program expenditures of $100 million or more.

—Section 5 provides that the internal audit unit director shall be appointed by the head of the designated Federal entity in accordance with the applicable laws and regulations governing appointments within the designated Federal entity. Relevant criteria for consideration by the head of the designated Federal entity would include an individual applicant's integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.

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[72] May 1987 Senate Hearing [Transcript, p. 29].

[73] See Chart No. 1 (Appendix C).

—Section 5 applies all of the authorities and responsibilities of sections 4 through 7 of the Inspector General Act to those internal audit units in the 33 designated Federal entities.

—Section 5 requires other Federal entities to submit annual reports to OMB, stating what actions have been taken by the entity (including establishment of an internal audit unit) to ensure that audits are conducted of its programs and operations, and summarizing any matters relating to the personnel, programs, and operations of the entity referred to prosecutive authorities.

For the 33 designated Federal entities, the Committee acknowledges the testimony that granting the full panoply of authorities and responsibilities contained in sections 4 through 7 of the Inspector General Act (such as the semi-annual reporting requirement) may be burdensome to some of those entities. The Committee notes that Inspectors General (and the internal audit unit directors created by S. 908) have some discretion over the amount of detail in the semi-annual reports required by section 5 of the Inspector General Act. Nonetheless, audit resolution and audit follow-up are as important in the smaller agencies as in the executive department and major agencies. Thus, S. 908, as reported, applies the reporting requirements of the Act to the internal audit units in the designated Federal entities.

With respect to the provision of the subpoena authority contained in section 6(a)(4) of the Act, all witnesses agreed that these smaller agencies should have it, expressing only the concern that they have the resources to support it.[74] The Committee intends that procedures other than subpoenas be used by the internal audit unit directors to obtain documents and information from federal agencies.

S. 908, as reported, also grants internal audit unit directors the authority to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions of the unit and to obtain temporary or intermittent services of experts or consultants. These activities shall be governed by applicable laws and regulations governing selections, appointments, and employment, and the obtaining of such services, within the designated Federal entities. The internal audit director has the option of utilizing existing systems designed to assist personnel in exercising these authorities.

For the 60-plus non-designated Federal entities, the Committee chose not to mandate the establishment of cognizant relationships between these very small agencies and existing Offices of Inspector General. At this time the Committee is not convinced that this one approach is the solution for all of these agencies. As the PCIE report noted, several of these agencies currently have internal audit units, and some have previously obtained audit coverage on a reimbursable basis from statutory Inspectors General.[75] A number of these agencies periodically obtain audit services from Certified Public Accountants and, while such firms would lack independence, they can and do provide audit coverage for a wide variety of Federal entities.[76]

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[74] May 1987 Senate Hearing [Transcript, pp. 38, 61; Response of OMB Deputy Director Joseph R. Wright, Jr. to followup question number 4 from Senator Roth].

[75] In accordance with 31 U.S.C. section 1535.

The Committee opted for a reporting requirement which would allow OMB to closely monitor the smaller agencies' compliance with OMB directives on internal audit and investigative coverage and follow-up. The Committee intends that those small agencies with audit and investigative coverage should maintain it and those that do not have it should obtain it. This provision allows for flexibility in obtaining audit and investigative coverage while providing a clear expectation that such coverage be obtained and maintained.

C. PROVISIONS TO ENSURE UNIFORMITY AND RELIABILITY OF REPORTS ON THE AUDIT RESOLUTION PROCESS

The IGs' semi-annual reports vary widely in format and in the terms used to describe the audit resolution process. As a result, it is difficult for Congress to analyze individual agencies and develop an overall picture of the Federal Government's progress against waste, fraud and mismanagement.

S. 908 would amend section 5 of the Act to require more uniform and statistically reliable reports from the Inspectors General, and for the first time require additional information on the progress made in implementing corrective actions from the heads of the affected establishments.

(1) Definition of Terms

The bill proposes uniform definitions for terms necessary to describe the audit resolution process. These terms are essential to obtain a more accurate picture of the savings attributable to the activities of the Inspectors General.

The current problem stems from OMB's directive that "audit resolution" occurs when the Inspector General and agency management agree on the action that should be taken to correct problems identified by the auditors.[77] GAO has documented that this definition leads Inspectors General to report dollar savings that may never actually materialize because the managers do not take the corrective action.[78] Moreover, this definition provides less incentive for agency management to follow up on its agreement to take corrective action.

To address this problem, the bill incorporates GAO's standard on "audit resolution", which states that resolution occurs at the point all agreed upon recommended action is completed. "Audit determination" is defined to mean the point at which the Inspector General and the establishment's managers reach agreement on the auditor's recommendations for corrective action. The bill also requires GAO to issue a new standard to ensure that an audit determination generally be made within six months of completion of the auditors' report.

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[76] Inspector General Funk testified that statutory Inspectors General currently contract out to CPA firms for some audit work. May 1987 Senate Hearing [Transcript, p. 39].

[77] OMB Circular No. A-50, Revised, September 29, 1982.

[78] February 1987 Senate Hearing, pp. 27-29; Audits of Federal Programs: Reasons for the Disparity Between Costs Questioned By Auditors and Amounts Agencies Disallow, GAO Report/AFMD-84-57, August 8, 1984.

(2) Information Required from Inspectors General

Under current law, the semi-annual reports must include a list of each audit report completed by the Office of Inspector General during the reporting period. The bill would require the Inspectors General to summarize the significant reports as well, and provide other information concerning problems the Inspector General may have faced in the audit determination process.

The bill initially proposed that the Inspectors General include a statistical analysis containing information on the status of audit reports through the point of audit determination. In testimony before the Committee, GAO recommended that Inspectors General also include data on audits through the point of resolution so that together, this information would provide a more complete picture of whether the auditors' recommendations are being considered and acted upon by agency managers in a timely fashion. The Committee notes that pursuant to section 4(a)(5) of the Inspector General Act, the Inspectors General must report on the "progress made in implementing" corrective action. Taking this into consideration, the Committee amended the bill's provision requiring a statistical analysis to include tracking of audit reports through the point of audit resolution.[79]

(3) Additional Information Required of Agency Heads

Although section 5(b) of the Inspector General Act states that the agency heads shall submit to Congress a "report" to accompany the Inspector General semi-annual reports, the Committee finds that the agency heads rarely attempt to analyze the data contained therein. OMB and GAO have testified in favor of increasing the accountability of the agency managers in the audit resolution process.

The bill would amend section 5(b) of the Inspector General Act to require agency heads to include in their reports to Congress information on audit reports which were not resolved within one year after the date on which audit determinations were made. This provision is intended to draw needed attention to cases that may be taking too long to resolve. The agency heads will be required to report on the lack of progress in resolving both monetary and nonmonetary findings. The Committee recognizes that, in some cases, litigation or other administrative appeals may be responsible for this situation. In other cases, it may be the result of agency management's lack of commitment to implementing agreed upon corrective action. For example, GAO testified that its recent review of the Department of Defense shows that the lack of commitment on the part of DOD managers to audit follow-up has resulted in over $300 million in unachieved savings.[80]

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[79] Chart No. 2 represents a recommended format for providing the information required by the statistical analysis (Appendix D).

[80] May 1987 Senate Hearing [Transcript, pp. 50–52].

D. OTHER AMENDMENTS

(1) Standardizing Authorizing Legislation

At present, sixteen of the 19 Offices of Inspector General were established by the Inspector General Act of 1978, or amendments thereto. The Offices of Inspector General in the Departments of Energy and Health and Human Services and in the Railroad Retirement Board were authorized by separate legislation. In the interest of uniformity and clarity, section 2 of S. 908 would bring these three OIGs under the Inspector General Act. This move will not change the fundamental powers and duties of those Inspectors General. Moreover, the bill explicitly provides that the persons occupying those positions on the date of enactment of the bill, shall not be affected. GAO and OMB testified in support of this proposal.

(2) Executive Schedule Amended

Under present law, statutory Inspectors General are compensated at different rates even though their powers and duties are essentially the same. In addition, they are all Presidential appointees, who are required to meet the same qualifications criteria for their appointment. Some Inspectors General are at Level V and others are at Level IV of the Executive Schedule. The Committee believes that these positions deserve the higher pay level, and section 3 of S. 908 would place all Inspectors General at Level IV. OMB endorses this change.

(3) Administration of Oaths

Section 7 of S. 908 would amend section 6(a) of the Inspector General Act to authorize investigators or other Office of Inspector General employees designated by Inspectors General to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the functions assigned by the Act.

During the conduct of investigations, it is often necessary for IG personnel to take voluntary sworn statements. Most Offices of Inspector General now have this authority, but a few do not. This amendment to the Act provides uniform authority to all Inspectors General (and internal audit unit directors) to administer oaths. It does not affect the subpoena authority of Inspectors General. OMB and GAO favor this change.

(4) Separate Appropriation Accounts

Section 8 of S. 908 would amend section 1105(a)(25) of title 31, United States Code, to require the President to include in his budget submission a "separate appropriation account" for each statutory Office of Inspector General. At present, many, but not all, of the Offices of Inspector General receive their appropriations through such separate accounts. The others have their funds commingled in accounts which include funds for other agency activities. Funds which are appropriated for Offices of Inspector General through a separate appropriation account cannot be reprogrammed by agency management for any other purpose. This method is preferable because it enhances each Inspector General's independence and control over resources. OMB and GAO support this amendment.

(5) Disclosure of Tax Returns and Return Information

Nothing in the 1978 Inspector General Act requires that sensitive information be included in the semi-annual reports of the Inspectors General. In fact, section 5(e)(1) of the Act specifically provides for the non-disclosure of information required by law to be protected from public disclosure. See, e.g., sections 6103 and 7213 of the Internal Revenue Code (relating to the protection of the confidentiality of tax returns and return information).

At the same time, section 5(e)(3) of the Inspector General Act provides that nothing in the Act "shall be construed to authorize or permit the withholding of information from the Congress, or from any committee or subcommittee thereof." Pursuant to the request of the Treasury Secretary, the Committee agreed to propose an amendment to section 5(e)(3) of the Act, contained in section 9 of S. 908, to reference the Internal Revenue Code's provision governing disclosure of tax returns and return information to Committees of Congress.[81]

IV. HEARINGS

The Committee on Governmental Affairs held three days of hearings on the need for additional statutory inspectors general and other legislation addressing inspector general operations and needs. The following individuals provided testimony:

February 19, 1987—Waste, Fraud and Abuse, Part II: Inspector General Operations and Needs

Richard P. Kusserow, Inspector General, Department of Health and Human Services, and James R. Richards, Inspector General, Department of the Interior
Charles R. Clauson, Chief Postal Inspector, United States Postal Service
John J. Adair, Associate Director, Fraud Prevention and Audit Oversight Group, General Accounting Office

April 9, 1987—The Need for an Inspector General at the NRC

Lando W. Zech, Jr., Chairman, NRC
Thomas M. Roberts, Commissioner, NRC
James K. Asselstine, Commissioner, NRC
Frederick M. Bernthal, Commissioner, NRC
Kenneth M. Carr, Commissioner, NRC
Ben B. Hayes, Director, Office of Investigations, NRC
Julian S. Greenspun, Esq., Former Justice Department Attorney
George A. Mulley, Jr., Assistant Director for Investigations, Office of Inspector and Auditor, NRC
H. Shannon Phillips, Senior Resident Inspector, NRC
Victor Stello, Jr., Executive Director for Operations, NRC

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[81] 26 U.S.C. section 6103(f).

May 12, 1987—S. 908, the Inspector General Act Amendments of 1987

Joseph R. Wright, Jr., Deputy Director, Office of Management and Budget

Sherman M. Funk, Inspector General, Department of Commerce

John J. Adair, Associate Director, Fraud Prevention and Audit Oversight Group, General Accounting Office

Stephen J. Markman, Assistant Attorney General, Office of Legal Counsel, and Michael E. Shaheen, Jr., Counsel, Office of Professional Responsibility, Department of Justice.

V. Tabulation of Votes

The Committee met on June 30, 1987 to consider S. 908. Senator Glenn offered an amendment in the nature of a substitute for the bill.

The Committee considered the amendment in the nature of a substitute offered by Senator Glenn. Upon a motion by Senator Roth, it was adopted unanimously on a voice vote.

Senator Roth offered an amendment in the second degree to strike the provisions in Section 4 which would transfer the internal audit function at the Internal Revenue Service into the new statutory Office of Inspector General in the Department of the Treasury, and to add provisions which would authorize the Inspector General for the Treasury Department to hire up to 50 additional auditors to perform internal audits in the Internal Revenue Service. This amendment was discussed by the Committee. The amendment failed upon a roll-call vote of 5 to 8.

YEAS—5	NAYS—8
William V. Roth, Jr. (R-DE)	Lawton Chiles (D-FL)
Ted Stevens (R-AL) (P)	Sam Nunn (D-GA) (P)
William S. Cohen (R-ME)	Carl Levin (D-MI)
Warren B. Rudman (R-NH)	Jim Sasser (D-TN) (P)
John Heinz (R-PA) (P)	David Pryor (D-AR)
	George J. Mitchell (D-ME) (P)
	Jeff Bingaman (D-NM) (P)
	John Glenn (D-OH)

(P) denotes Proxy.

A quorum being present, the Committee had already agreed to report favorably S. 908, as amended, by unanimous vote of 9 to 0.

YEAS—9	NAYS—0
Lawton Chiles (D-FL)	
Carl Levin (D-MI)	
David Pryor (D-AR)	
William V. Roth, Jr. (R-DE)	
Ted Stevens (R-AL)	
Warren B. Rudman (R-NH)	
John Heinz (R-PA)	
Paul S. Trible, Jr. (R-VA)	
John Glenn (D-OH)	

Senators Nunn, Sasser, Mitchell and Bingaman, not present when the vote was taken, also expressed their approval of S. 908, as amended.

VI. SECTION-BY-SECTION ANALYSIS

A. SHORT TITLE

The opening section states the title of this bill as the "Inspector General Act Amendments of 1987".

B. CONFORMATION OF AUTHORITIES OF EXISTING OFFICES OF INSPECTORS GENERAL

Section 2(a) is a technical amendment.

Sections 2 (b) and (c) bring the statutory Offices of Inspector General in the Departments of Energy and Health and Human Services and in the Railroad Retirement Board under the Inspector General Act of 1978. *Sections 2 (d) and (e)* repeal existing laws establishing these three statutory offices, but also provide that the persons occupying such Inspector General positions on the date of enactment shall not be affected. References to the Community Services Administration are deleted because that agency was abolished.

C. UNIFORM SALARIES FOR INSPECTORS GENERAL

Section 3 provides that all statutory Inspectors General will be compensated at the Executive Level IV rate, regardless of the establishment in which they serve.

D. ESTABLISHING AN OFFICE OF INSPECTOR GENERAL IN TREASURY DEPARTMENT, FEMA, NRC AND OPM

Section 4(b) establishes new statutory Offices of Inspector General in the Department of the Treasury, the Federal Emergency Management Agency (FEMA), the Nuclear Regulatory Commission (NRC), and the Office of Personnel Management (OPM).

Section 4(a) mandates the transfer of certain existing audit and investigative units in these establishments to the newly-created statutory IG offices. Notwithstanding any other provision of law, the statutory OIG in the Treasury Department will have sole responsibility for internal audits in the Department and in the Customs Service, Secret Service, Bureau of Alcohol, Tobacco and Firearms (BATF), and the Internal Revenue Service (IRS). Except in certain specified cases, the internal investigations function will remain the responsibility of these four bureaus of the Treasury Department.

The "Notwithstanding . . . law," language in section 4(a) refers to provisions in Treasury appropriation measures which have prohibited the use of funds to place the Customs Service, Secret Service and BATF under the Inspector General's jurisdiction.

The new Office of Inspector General in the NRC will include the functions performed by the NRC's Office of Inspector and Auditor and Office of Investigations.

Section 4(c) adds a specific provision to the IG Act of 1978 (in new Section 8B) concerning the authority of the Chairman of the NRC, as "head of [that] establishment", to delegate supervision of the new Inspector General to another member of the Commission, and to no other officer or employee of the Commission. This provision is necessary to prevent delegation of the Chairman's supervisory authority to a program manager at the NRC.

Section 4(c) also sets forth special provisions (in new Section 8C) regarding the authority of the Inspector General established in the Treasury Department over internal investigations, especially those involving the Customs Service, Secret Service, BATF, and IRS.

Section 4(c) also contains a provision in new Section 8C which potentially restricts the Treasury Inspector General's activities when they involve sensitive information relating to law enforcement activities, national security and intelligence and counterintelligence matters, deliberations and decisions on certain policy matters, and Secret Service protection responsibilities. By invoking this provision, the Treasury Secretary may control or quash any audit or investigation, or issuance of subpoena, but notice of such action will be provided to Congress.

Section 4(d) amends section 5315 of title 5 (as previously amended by section 3 of this bill) to provide the uniform rate of pay for the newly-created Inspectors General.

E. REQUIREMENTS AND PROTECTIONS FOR AUDIT AND INVESTIGATION UNITS

Section 5(a) amends the Inspector General Act of 1978 by inserting a new Section 8D which sets requirements for establishing internal audit units in specifically designated Federal entities not now covered by the Act, and requires the remaining Federal entities annually to report to OMB on the status of their audit and investigation coverage.

The provisions of new Section 8D are summarized below:

Subsection (a) provides definitions for (1) "Federal entity", (2) "designated Federal entity", (3) "head of the Federal entity", (4) "head of the designated Federal entity", (5) "internal audit unit", and (6) "internal audit unit director".

Subsection (b) requires that within 180 days of passage of the bill, there shall be established in each of the 33 designated Federal entities an internal audit unit. An internal audit unit is defined as a component of a Federal entity which carries out audits or investigations, or both, of the programs and operations of such entity, but does not include a component that carries out audits or investigations as an integral part of the conduct of the programs and operations of such entity. All current internal audit and investigative resources within those entities shall be transferred into these units, but no program operating responsibilities shall be transferred to an internal audit unit. For example, there are components within these entities that perform audit-like functions, such as bank examinations, as an integral part of program operations. These functions would not be affected by this provision.

For almost all of the designated Federal entities, this provision will require the consolidation of all existing internal and audit and investigation resources into a single unit headed by an appointed internal audit unit director. However, in several cases, the heads of the designated Federal entities shall be required to create an internal audit unit and appoint a director of such unit where none existed before.

Subsection (c) requires the internal audit unit director to be appointed by the Federal entity head in accordance with the applicable laws and regulations governing appointments within the Federal entity.

Subsection (d) provides that the internal audit unit director is to report to and be under the general supervision of the head of the designated Federal entity. The head of the designated Federal entity shall not prevent or prohibit the internal audit unit director from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

Subsection (e) provides that if an internal audit unit director is removed from office or transferred to another position or location within the designated Federal entity, the head of the designated Federal entity shall promptly communicate to both Houses of Congress the reasons for such action.

Subsection (f) provides additional protection against unilateral removal or transfer of the Chief Postal Inspector of the United States Postal Service, who is deemed to be the "internal audit unit director" at that designated Federal entity. The Postmaster General's order removing or transferring the Chief Postal Inspector would require ratification by a vote of two-thirds of the Governors of the United States Postal Service.

Subsection (g) extends to the internal audit units in the designated Federal entities those powers and duties contained in sections 4–7 of the Inspector General Act of 1978, other than the specific authorities concerning hiring and contracting out for the temporary services of experts and consultants. Regarding those latter two authorities, the applicable laws and regulations which govern those activities in the designated Federal entity shall govern the internal audit unit director.

Subsection (g) also provides that the internal audit unit director of the Board of Governors of the Federal Reserve System is subject to limitations similar to those placed on the Inspector General of the Treasury Department as provided in new section 8C of the Act (as added by section 4(c) of S. 908).

Subsection (h) requires the head of each Federal entity which is not a designated Federal entity to file a report annually with OMB which (1) states whether there has been established in the Federal entity an internal audit unit that meets the requirements of the new section 8D, (2) specifies the actions taken by the Federal entity to ensure that audits are conducted of its programs and operations, including a list of such audits completed during the year, and (3) summarizes those matters relating to the Federal entity which have been referred to prosecutive authorities, including a description of any preliminary investigation conducted by or at the request of the Federal entity.

Section 5(b) is a technical amendment.

F. PROVISIONS TO ENSURE UNIFORMITY AND RELIABILITY OF INSPECTOR GENERAL REPORTS

Section 6 amends section 5 of the Inspector General Act of 1978 to require more uniform and statistically reliable reports from the Inspectors General, and to require additional information on the audit resolution process from the heads of the respective establishments. (The requirements of the Act's section 5 will also apply to internal audit unit directors and heads of designated Federal entities.)

Section 6(a) sets forth specific information on audit reports completed by the Inspector General to be provided to heads of establishments and Congress.

Sections (6) (b) and (c) concern the additional information on certain unresolved audit reports required of the head of an establishment, to accompany the transmittal of the Inspector General's semi-annual report to Congress.

Section 6(d) adds a new section 5(f) of the Act containing definitions of: (1) "ineligible cost", (2) "unsupported cost", (3) "disallowed cost", (4) "audit determination", (5) "audit resolution", and (6) "audit status".

Section 6(e) amends section 3512(b)(2) of title 31 to establish a standard definition for the term "audit resolution" and to ensure that audit determinations are made within six months after the completion of audit reports.

G. OATH ADMINISTRATION AUTHORITY

Section 7 amends section 6(a) of the Inspector General Act of 1978 to authorize all Inspectors General to administer oaths, affirmations and affidavits in the performance of their assigned duties.

H. APPROPRIATION ACCOUNTS

Section 8 amends section 1105(a)(25) of title 31 to require the President to include in his budget submission a "separate appropriation account" for appropriations for each Office of Inspector General.

I. DISCLOSURE OF TAX RETURNS AND RETURN INFORMATION

Section 9 amends section 5(e)(3) of the Inspector General Act of 1978 to incorporate a reference to the Internal Revenue Code's provision governing disclosure of sensitive tax returns and return information to Committee of Congress.

VII. COST ESTIMATE OF LEGISLATION

(1) The cost estimate prepared by the Congressional Budget Office is contained in the following letter from its Director:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 17, 1987.

Hon. JOHN GLENN,
Chairman, Committee on Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 908, the Inspector General Act Amendments of 1987, as ordered reported by the Senate Committee on Governmental Affairs, June 30, 1987.

The bill would amend the Inspector General Act of 1978 by establishing an office of Inspector General in four agencies not already covered by the act and by setting a uniform salary level for all Inspectors General. The bill also would consolidate the existing auditing functions in 28 federal agencies and would create an audit unit at five agencies where audit functions do not currently exist. These changes would result in increased costs of about $1 million per year, largely for the creation of the five new audit units and for increasing the salaries of certain Inspectors General. Other provisions of S. 908, designed to improve the effectiveness of audit units in federal agencies, are estimated to have no significant cost.

Enactment of this bill would not affect the budget of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

EDWARD M. GRAMLICH,
Acting Director.

(2) The Committee notes that in 1986, OMB Director James C. Miller III testified before the Committee on the President's Management Legislative Initiatives, and responded to questions from Senator Roth, as follows:

> Chairman ROTH. As a strong supporter of the inspector general concept, I do think it is important that we extend that concept to the other [small] agencies.
>
> The major complaint is that this could be costly or expensive. Is that necessarily inherent in setting up an independent audit office?
>
> Mr. MILLER. I don't think so. Our finding is that inspectors general tend to, by far, pay for themselvess.
>
> Chairman ROTH. Do you support, in principle, the extension of this concept to the independent agencies?
>
> Mr. MILLER. Yes.[82]

VIII. REGULATORY IMPACT OF LEGISLATION

In accordance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the following statement of the regulatory impact of S. 908 is made.

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[82] Sen. Rpt. 99-351, p. 6.

S. 908 makes certain amendments to the Inspector General Act of 1978. The Committee finds that S. 908 as reported will entail no significant additional regulation of any individuals or businesses. No new regulations would be promulgated, and no new information requirements would be made on the public. There will be no additional paperwork requirements resulting from enactment.

IX. ADDITIONAL VIEWS OF SENATOR WILLIAM V. ROTH, JR.

I support the establishment of a statutory Office of Inspector General in the Treasury Department, as provided by S. 908, which would have complete authority under the Inspector General Act to conduct internal audits in all of the administrative units of the Department, including the Internal Revenue Service.

However, I do not wish to accomplish this by transferring all of the internal auditors in the IRS' Office of Inspections to the Office of Inspector General, as would occur if S. 908 is enacted.

During markup of S. 908, I offered an amendment which, had it been adopted, would do three things:

First, the IRS' internal auditors would remain in the Office of Inspections;

Second, the Inspector General of the Department of the Treasury would be given full authority to conduct internal audits under the Inspector General Act in the IRS; and,

Third, the Inspector General would be authorized to employ up to 50 auditors to perform audits in the IRS, positions which could be drawn from the 8,000 new positions being provided to the IRS in fiscal 1988.

The intent of my amendment was to provide a double-check on the operations of the Internal Revenue Service. The first check is provided by the internal auditors in the independent Office of Inspections within IRS. The second check would be provided by the Inspector General, utilizing the personnel and authority granted by my amendment.

The Internal Revenue Service is one of the most sensitive agencies of the federal government, because it deals with the relationship between tax collector and taxpayer. That is a relationship fraught with controversy from pre-Revolutionary times to the present.

In the wake of scandals involving Bureau of Internal Revenue personnel, President Truman submitted a plan to Congress under the Reorganization Act which effectuated the establishment of the IRS' Office of Inspections.[1]

As noted by the House Committee on Expenditures in the Executive Departments (now the Government Operations Committee) in its report on the plan:

> A comprehensive inspection service will be created to function directly under the Commissioner and independent of the rest of the Bureau. This will permit a continuing and thoroughgoing day-to-day check on the performance and conduct of all Bureau employees.[2]

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[1] Reorganization Plan No. 1 of 1952.

[2] House Report No. 1271, 82d Congress, 2d Session, p. 6.

Since its establishment thirty-five years ago, the Office of Inspections has served the Commissioner of IRS by keeping the operations and management of the Service under continual scrutiny and control. It is independent of operations, reporting directly to the Commissioner. The maintenance of an internal audit function within the Service provides the Commissioner with the opportunity to direct audit coverage to promptly react to unforeseen developments, such as the mishandling of tax returns in the Philadelphia office in 1985.

I fear that we would hinder the Commissioner's efforts to deal with problems in the management of IRS if he lost all of his internal auditors to the Inspector General Office. With all the concerns that we and our fellow citizens have about the operation of the IRS, I believe that we need to provide a double-check on its operations.

This double-check approach is not unprecedented. When Congress established the statutory Office of Inspector General in the Department of Defense in 1982, the Defense Contract Audit Agency was not transferred into the Office of Inspector General; rather, the Inspector General was given 100 additional auditors to conduct contract audits and, thus, act as a double-check on DCAA's work. While DCAA performs a different audit function from that performed by the IRS' Office of Inspections, the need and the solution was the same as I proposed for the IRS.

My proposal would provide for a strong IG function at Treasury without removing the important management audit function from IRS. Given the sensitivity of the work of the IRS, and the concerns of our citizens over the efficiency and integrity of that work, I believe that we should provide a double-check on its operations as would have been provided by my amendment.

X. CHANGES IN EXISTING LAWS

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 908, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INSPECTOR GENERAL ACT OF 1978

* * * * * * *

PURPOSE; ESTABLISHMENT

SEC. 2. In order to create independent and objective units—

⟦(1) to conduct and supervise audits and investigations relating to programs and operations of the Department of Agriculture, the Department of Commerce, the Department of Defense, the Department of Education, the Department of Housing and Urban Development, the Department of the Interior, the Department of Labor, the Department of Transportation, the Agency for International Development, the Community Services Administration, the Environmental Protection Agency, the General Services Administration, the National Aeronautics and Space Administration, the Small Business Administration, the United States Information Agency, the Veterans' Administration, and the Department of State;⟧

(1) to conduct and supervise audits and investigations relating to the programs and operations of the establishments listed in section 11(2);

* * * * * * *

REPORTS

SEC. 5. (a) Each Inspector General shall, not later than April 30 and October 31 of each year, prepare semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30. Such reports shall include, but need not be limited to—

(1) * * *

* * * * * * *

(5) a summary of each report made to the head of the establishment under section 6(b)(2) during the reporting period; ⟦and⟧

⟦(6) a listing of each audit report completed by the Office during the reporting period.⟧

(6) a list, subdivided according to subject matter, of each audit report completed by the Office during the reporting period, together with a summary of the significant reports;

(7) a detailed statistical analysis of audit reports, depicting in tables arranged by audit status information concerning—

(A) the number of audit reports in each audit status;

(B) the number of such reports for which an audit determination was not made within 6 months of the date of completion of such reports;

(C) where applicable, the amounts of ineligible costs, ineligible costs that were disallowed, unsupported costs, and unsupported costs that were disallowed; and

(D) where applicable, the amount of disallowed costs returned to, or offset by, the Government;

(8) a summary of each significant audit report completed before the commencement of the reporting period and identified under paragraph (7)(B), together with an explanation of the reason the audit determination was not made during the period described in such paragraph;

(9) a description of, and an explanation of the reasons for, any significant revised audit determinations made during the reporting period; and

(10) information concerning any significant audit determination with which the Inspector General is in disagreement.

(b) Semiannual reports of each Inspector General shall be furnished to the head of the establishment involved not later than April 30 and October 31 of each year and shall be transmitted by such head to the appropriate committees or subcommittees of the Congress within thirty days after receipt of the report, together with a report by the head of the establishment containing *(1)* any comments such head deems appropriate, *(2) a list of each audit report made by the establishment's Office of Inspector General which was not resolved within one year after the date on which an audit determination was made on such report, (3) an explanation of the reason such audit was not resolved, and (4) for each such audit report, the amount of disallowed costs that are under administrative or judicial appeal and the amount of any disallowed costs returned to, or offset by, the Government.*

(c) Within sixty days of the transmission of the semiannual reports of each Inspector General to the Congress, the head of each establishment shall make copies of such report available to the public upon request and at a reasonable cost. *The head of each establishment shall also make copies of the report of such head required under subsection (b) available to the public upon request and at a reasonable cost.*

* * * * * * *

(e)(3) [Nothing] *Except to the extent provided in section 6103(f) of the Internal Revenue Code of 1986 nothing* in this section or in any other provision of this Act shall be construed to authorize or permit the withholding of information from the Congress, or from any committee or subcommittee thereof.

(f) As used in this section—

(1) the term "ineligible cost" means an incurred cost that is questioned by the Office of Inspector General because of an alleged violation of a provision of a law, regulation, contract,

grant, cooperative agreement, or other agreement or document governing the expenditure of funds;

(2) the term "unsupported cost" means an incurred cost that is questioned by the Office of Inspector General because the Office found that, at the time of the audit, such cost was not supported by adequate documentation;

(3) the term "disallowed cost" means an ineligible cost or unsupported cost that the management of an establishment has concluded, in an audit determination, should not be charged to the Federal Government;

(4) the term "audit determination" means the evaluation by the management of an establishment of the findings and recommendations included in an audit report and the issuance of a written final decision by management concerning its response, including corrective actions concluded to be necessary, to such findings and recommendations;

(5) the term "audit resolution" means the completion of all corrective actions that the management of an establishment has concluded, in an audit determination, are necessary with respect to the findings and recommendations included in an audit report, and, in the event that the management of an establishment concludes no corrective action is necessary, "audit resolution" occurs when an audit determination has been reached; and

(6) the term "audit status" includes the following six categories:

(A) audits for which the audit report was completed before the commencement of the reporting period and for which—

(i) the audit determination was not made by the end of such period;

(ii) the audit determination was made during such period and for which audit resolution has not occurred; and

(iii) the audit determination was made during such period and for which audit resolution has occurred; and

(B) audits for which the audit report was completed during the reporting period and for which—

(i) the audit determination was not made by the end of such period;

(ii) the audit determination was made during such period and for which audit resolution has not occurred; and

(iii) the audit determination was made during such period and for which audit resolution has occurred.

AUTHORITY; ADMINISTRATION PROVISIONS

SEC. 6. (a) In addition to the authority otherwise provided by this Act, each Inspector General, in carrying out the provisions of this Act, is authorized—

(1) * * *

* * * * * * *

(5) to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the functions assigned by this Act, which oath, affirmation, or affidavit when administered or taken by or before an investigator or such other employee of an Office of Inspector General designated by the Inspector General shall have the same force and effect as if administered or taken by or before an officer having a seal;

[(5)**]** *(6)* to have direct and prompt access to the head of the establishment involved when necessary for any purpose pertaining to the performance of functions and responsibilities under this Act;

[(6)**]** *(7)* to select, appoint, and employ such officers and employee as may be necessary for carrying out the functions, powers and duties of the Office subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

[(7)**]** *(8)* to obtain services as authorized by section 3109 of title 5, United States Code, at daily rates not to exceed the equivalent rate prescribed for grade GS-18 of the General Schedule by section 5332 of title 5, United States Code; and

[(8)**]** *(9)* to the extent and in such amounts as may be provided in advance by appropriations Acts, to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of this Act.

* * * * * * *

SPECIFIC PROVISION CONCERNING THE NUCLEAR REGULATORY COMMISSION

SEC. 8B. The Chairman of the Commission may delegate the authority specified in the second sentence of section 3(a) to another member of the Nuclear Regulatory Commission, and shall not delegate such authority to any other officer or employee of the Commission.

SPECIAL PROVISIONS REGARDING THE DEPARTMENT OF THE TREASURY

SEC. 8C. (a) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of the Treasury shall have general oversight responsibility for the internal investigations performed by the Office of Internal Affairs of the Bureau of Alcohol, Tobacco and Firearms, the Office of Internal Affairs of the United States Customs Service, the Office of Inspections of the Internal Revenue Service, and the Office of Inspections of the United States Secret Service. The head of each such office shall periodically report to the Inspector General the significant investigative activities being carried out by such office.

(b) Notwithstanding subsection (a), the Inspector General of the Department of the Treasury may conduct an investigation of any officer or employee of such Department if—

(1) the Secretary of the Treasury or the Deputy Secretary of the Treasury requests the Inspector General to conduct an investigation;

(2) the investigation concerns senior officers or employees of the Department of Treasury, including officers appointed by the President, members of the Senior Executive Service, and individuals in positions classified at grade GS–15 of the General Schedule or above or classified at a grade equivalent to such grade or above such equivalent grade; or

(3) the investigation involved alleged notorious conduct or any other matter which, in the opinion of the Inspector General, is especially sensitive or of departmental significance.

(c) If the Inspector General of the Department of the Treasury initiates an investigation under subsection (b), and the officer or employee of the Department of the Treasury subject to investigation is employed by or attached to a bureau or service referred to in subsection (a), the Inspector General may provide the head of the office of such bureau or service referred to in subsection (a) with written notice that the Inspector General has initiated such an investigation. If the Inspector General issues a notice under the preceding sentence, no other investigation shall be initiated into the matter under investigation by the Inspector General and any other investigation of such matter shall cease.

(d)(1) Notwithstanding the last two sentences of section 3(a), the Inspector General of the Department of the Treasury shall be under the authority, direction, and control of the Secretary of the Treasury with respect to audits or investigations, or the issuance of subpenas, which require access to information concerning—

(A) ongoing criminal investigations or proceedings;

(B) sensitive undercover operations;

(C) the identity of confidential sources, including protected witnesses;

(D) deliberations and decisions on policy matters, including documented information used as a basis for making policy decisions, the disclosure of which could reasonably be expected to have a significant influence on the economy or market behavior; or

(E) other matters the disclosure of which would constitute a serious threat to national security or to the protection of any person authorized protection by section 3056 of title 18, United States Code.

(2) With respect to the information described in paragraph (1), the Secretary of the Treasury may prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpena, after the Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpena, if the Secretary of the Treasury determines that such prohibition is necessary to preserve the confidentiality of or prevent the disclosure of any information described in paragraph (1).

(3) If the Secretary of the Treasury exercises any power under paragraph (1) or (2), the Secretary of the Treasury shall notify the Inspector General of the Department of the Treasury in writing of such exercise. Within 30 days after receipt of any such notice, the

Inspector General of the Department of the Treasury shall transmit a copy of such notice to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives, and to other appropriate committees or subcommittees of Congress, together with any comments the Inspector General deems appropriate.

SPECIFIC REQUIREMENTS FOR FEDERAL ENTITIES

SEC. 8D. (a) As used in this section—

(1) the term "Federal entity" means any Government corporation (within the meaning of section 103(1) of title 5, United States Code), any Government controlled corporation (within the meaning of section 103(2) of such title), or any other entity in the Executive branch of the Government, or any independent regulatory agency, but does not include—

(A) an establishment (as defined in section 11(2) of this Act) or part of an establishment;

(B) the Executive Office of the President;

(C) the Central Intelligence Agency;

(D) the General Accounting Office;

(E) the Department of Justice; or

(F) any entity in the judicial or legislative branches of the Government including the Administrative Office of the United States Courts and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol;

(2) the term "designated Federal entity" means ACTION, Amtrak, the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System, the Board for International Broadcasting, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Election Commission, the Federal Home Loan Bank Board, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the National Labor Relations Board, the National Science Foundation, the Panama Canal Commission, the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the Tennessee Valley Authority, the United States International Trade Commission, and the United States Postal Service;

(3) the term "head of the Federal entity" means the director, administrator, president, chairman, or chief executive officer of a Federal entity, or any other body designated by statute as the head of a Federal entity;

(4) the term "head of the designated Federal entity" means the director, administrator, president, chairman, or chief execu-

tive officer of a designated Federal entity, or any other body designated by statute as the head of a designated Federal entity;

(5) the term "internal audit unit" means a component of a Federal entity which carries out audits or investigations, or both, of the programs and operations of such entity, but does not include a component that carries out audits or investigations as an integral part of the conduct of the programs and operations of such entity; and

(6) the term "internal audit unit director" means the head of an internal audit unit.

(b) After the date which is 180 days after the date of enactment of this section there shall be established in each designated Federal entity an internal audit unit. The head of the designated Federal entity shall transfer to the internal audit unit established in such entity the offices, units, or other components, and the functions, powers, or duties thereof, that such head determines are properly related to the functions of the internal audit unit and would, if so transferred, further the purposes of this section. There shall not be transferred to an internal audit unit any program operating responsibilities.

(c) The internal audit unit director shall be appointed by the head of the designated Federal entity in accordance with the applicable laws and regulations governing appointments within the designated Federal entity.

(d) Each internal audit unit director shall report to and be under the general supervision of the head of the designated Federal entity, but shall not report to, or be subject to supervision by, any other officer or employee of such designated Federal entity. The head of the designated Federal entity shall not prevent or prohibit the internal audit unit director from initiating, carrying out, or completing any audit or investigation, or from issuing any subpena during the course of any audit or investigation.

(e) If an internal audit unit director is removed from office or is transferred to another position or location within a designated Federal entity, the head of the designated Federal entity shall promptly communicate the reasons for any such removal or transfer to both Houses of Congress.

(f)(1) The Chief Postal Inspector of the United States Postal Service shall be the internal audit unit director of the United States Postal Service, and for purposes of this section, shall report to, and be under the general supervision of the Postmaster General. The Chief Postal Inspector may be removed from office or transferred to another position or location within the United States Postal Service if the Postmaster General issues a written order stating the reason for such action and two-thirds of the Governors of the United States Postal Service vote to ratify such order. If the Chief Postal Inspector is removed or transferred in accordance with this subsection, the Postmaster General shall promptly notify both Houses of Congress of the reasons for such removal or transfer.

(2) For purposes of paragraph (1), the term "Governors" has the same meaning as in section 102(3) of title 39, United States Code.

(g)(1) Sections 4, 5, 6, and 7 of this Act (other than sections 6(a)(7) and 6(a)(8)) shall be applied to each internal audit unit, internal

audit unit director, designated Federal entity, and head of the designated Federal entity (as such terms are defined in subsection (a)) by substituting—

(A) "internal audit unit director" for "Inspector General",

(B) "designated Federal entity" for "establishment";

(C) "internal audit unit" for "Office"; and

(D) "head of the designated Federal entity" for "head of the establishment".

(2) In addition to the other authorities specified in this Act, an internal audit unit director is authorized to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the internal audit unit and to obtain the temporary or intermittent services of experts or consultants or an organization thereof, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within the designated Federal entity.

(3) The provisions of subsection (d) of section 8C (other than the provisions of subparagraphs (A), (B), (C), and (E) of subsection (d)(1)) shall apply to the internal audit unit director of the Board of Governors of the Federal Reserve System and the Chairman of the Board of Governors of the Federal Reserve System in the same manner as such provisions apply to the Inspector General of the Department of the Treasury and the Secretary of the Treasury, respectively.

(h) Within one year after the date of enactment of this section, and on October 31 of each calendar year thereafter, the head of each Federal entity which is not a designated Federal entity shall prepare and transmit to the Director of the Office of Management and Budget a report which—

(1) states whether there has been established in the Federal entity an internal audit unit that meets the requirements of this section;

(2) specifies the actions taken by the Federal entity to ensure that audits are conducted of its programs and operations in accordance with the standards for audit of governmental organizations, programs, activities, and functions issued by the Comptroller General of the United States, including a list of each audit report completed by a Federal or non-Federal auditor during the reporting period; and

(3) summarizes any matters relating to the personnel, programs, and operations of the Federal entity referred to prosecutive authorities, including a summary description of any preliminary investigation conducted by or at the request of the Federal entity concerning these matters, and the prosecutions and convictions which have resulted.

TRANSFER OF FUNCTIONS

SEC. 9. (a) There shall be transferred—

(1) to the Office of Inspector General—

(A) * * *

* * * * * * *

(E) of the Department of Energy, the Office of Inspector General (as established by section 208 of the Department of Energy Organization Act);

(F) of the Department of Health and Human Services, the Office of Inspector General (as established by title II of Public Law 94-505);

[(E)] *(G)* of the Department of Housing and Urban Development, the office of that department referred to as the "Office of Inspector General";

[(F)] *(H)* of the Department of the Interior, the office of that department referred to as the "Office of Audit and Investigation";

[(G)] *(I)* of the Department of Labor, the office of that department referred to as the "Office of Special Investigations";

[(H)] *(J)* of the Department of Transportation, the offices of that department referred to as the "Office of Investigations and Security" and the "Office of Audit" of the Department, the "Offices of Investigations and Security, Federal Aviation Administration", and "External Audit Divisions, Federal Aviation Administration", the "Investigations Division and the External Audit Division of the Office of Program Review and Investigation, Federal Highway Administration", and the "Office of Program Audits, Urban Mass Transportation Administration";

[(I) of the Community Services Administration, the offices of that agency referred to as the "Inspections Division", the "External Audit Division", and the "Internal Audit Division";]

(K) of the Department of the Treasury, the office of that department referred to as the "Office of Inspector General", and, notwithstanding any other provision of law, that portion of each of the offices of that department referred to as the "Office of Internal Affairs, Bureau of Alcohol, Tobacco, and Firearms", the "Office of Internal Affairs, United States Customs Service", the "Office of Inspections, Internal Revenue Service", and the "Office of Inspections, United States Secret Service" which is engaged in internal audit activities;

[(J)] *(L)* of the Environmental Protection Agency, the offices of that agency referred to as the "Office of Audit" and the "Security and Inspection Division";

(M) of the Federal Emergency Management Agency, the office of that agency referred to as the "Office of Inspector General";

[(K)] *(N)* of the General Services Administration, the offices of that agency referred to as the "Office of Audits" and the "Office of Investigations";

[(L)] *(O)* of the National Aeronautics and Space Administration, the offices of that agency referred to as the "Management Audit Office" and the "Office of Inspections and Security";

(P) of the Nuclear Regulatory Commission, the offices of that commission referred to as the "Office of Inspector and Auditor" and the "Office of Investigations";

(Q) of the Office of Personnel Management, the offices of that agency referred to as the "Office of Inspector General", the "Insurance Audits Division, Retirement and Insurance Group", and the "Analysis and Evaluation Division, Administration Group";

(R) of the Railroad Retirement Board, the Office of Inspector General (as established by section 23 of the Railroad Retirement Act of 1974);

[(M)] *(S)* of the Small Business Administration, the office of that agency referred to as the "Office of Audits and Investigations"; and

[(N)] *(T)* of the Veterans' Administration, the offices of that agency referred to as the "Office of Audits" and the "Office of Investigations"; and

* * * * * * *

DEFINITIONS

SEC. 11. As used in this Act—

(1) the term "head of the establishment" means the Secretary of Agriculture, Commerce, Defense, Education, *Energy, Health and Human Services,* Housing and Urban Development, the Interior, Labor, State, [or Transportation or] *Transportation, or the Treasury;* the Administrator of the Agency for International Development, [Community Services,] Environmental Protection, General Services, National Aeronautics and Space, Small Business, or Veterans' Affairs [, or the Director of the United States Information Agency]; *the Director of the Federal Emergency Management Agency, the Office of Personnel Management, or the United States Information Agency; or the Chairman of the Nuclear Regulatory Commission or the Railroad Retirement Board,* as the case may be;

(2) the term "establishment" means the Department of Agriculture, Commerce, Defense, Education, *Energy, Health and Human Services,* Housing and Urban Development, the Interior, Labor, State, [or Transportation or] *Transportation, or the Treasury;* the Agency for International Development, [the Community Service Administration,] the Environmental Protection Agency, *the Federal Emergency Management Agency,* the General Services Administration, the National Aeronautics and Space Administration, *the Nuclear Regulatory Commission, the Office of Personnel Management, the Railroad Retirement Board,* the Small Business Administration, the United States Information Agency, or the Veterans' Administration, as the case may be;

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TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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Subpart D—Pay and Allowances

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CHAPTER 53—PAY RATES AND SYSTEMS

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Subchapter II—Executive Schedule Pay Rates

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SEC. 5315. POSITIONS AT LEVEL IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Administrator of General Services.

* * * * * * *

Inspector General, Department of Commerce.
Inspector General, Department of the Interior.
Inspector General, Agency for International Development.
Inspector General, Environmental Protection Agency.
Inspector General, General Services Administration.
Inspector General, National Aeronautics and Space Administration.
Inspector General, Railroad Retirement Board.
Inspector General, Small Business Administration.
Inspector General, Department of the Treasury.
Inspector General, Federal Emergency Management Agency.
Inspector General, Nuclear Regulatory Commission.
Inspector General, Office of Personnel Management.

SEC. 5316. POSITIONS AT LEVEL V

Level V of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Administrator, Agricultural Marketing Service, Department of Agriculture.

* * * * * * *

[Inspector General, Agency for International Development.]

* * * * * * *

[Inspector General, Department of Commerce.]
Members, Federal Labor Relations Authority (2) and its General Counsel.
[Inspector General, Department of the Interior.]
Director of the Office of Government Ethics.
[Inspector General, Community Services Administration.]

[Inspector General, Environmental Protection Agency.]
[Inspector General, General Services Administration.]
[Inspector General, National Aeronautics and Space Administration.]
[Inspector General, Small Business Administration.]

* * * * * * *

Public Law 94-505 [H.R. 11347]; Oct. 14, 1976

SHRINERS' HOSPITAL FOR CRIPPLED CHILDREN—COLORADO CORPORATION—CONVEYANCE

* * * * * * *

[TITLE II—OFFICE OF INSPECTOR GENERAL

[Sec. 201. In order to create an independent and objective unit—

[(1) to conduct and supervise audits and investigations relating to programs and operations of the Department of Health, Education, and Welfare;

[(2) to provide leadership and coordination and recommend policies for activities designed (A) to promote economy and efficiency in the administration of, and (B) to prevent and detect fraud and abuse, in, such programs and operations; and

[(3) to provide a means for keeping the Secretary and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action;

there is hereby established in the Department of Health, Education, and Welfare an Office of Inspector General.

[OFFICERS

[Sec. 202. (a) There shall be at the head of the Office an Inspector General who shall be appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability and without regard to political affiliation. The Inspector General shall report to and be under the general supervision of the Secretary or, to the extent such authority is delegated, the Under Secretary, but shall not be under the control of, or subject to supervision by, any other officer of the Department.

[(b) There shall also be in the Office a Deputy Inspector General appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability and without regard to political affiliation. The Deputy shall assist the Inspector General in the administration of the Office and shall during the absence or temporary incapacity of the Inspector General, or during a vacancy in that office, act as Inspector General.

[(c) The Inspector General or the Deputy may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

[(d) The Inspector General and the Deputy shall each be subject to the provisions of subchapter III of chapter 73, title 5, United States Code, notwithstanding any exemption from such provisions which might otherwise apply.

[(e) The Inspector General shall, in accordance with applicable laws and regulations governing the civil service—

[(1) appoint an Assistant Inspector General for Auditing who shall have the responsibility for supervising the performance of the functions, powers, and duties transferred by section 6(a)(1), and

[(2) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of the functions, powers, and duties transferred by section 6(a)(2).

[DUTIES AND RESPONSIBILITIES

[SEC. 203. (a) It shall be the duty and responsibility of the Inspector General—

[(1) to supervise, coordinate, and provide policy direction for auditing and investigative activities relating to programs and operations of the Department;

[(2) to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by the Department for the purpose of promoting economy and efficiency in the administration of, or preventing and defecting fraud and abuse in, its programs and operations;

[(3) to recommend policies for, and to conduct, supervise, or coordinate relationships between the Department and other Federal agencies, State and local governmental agencies, and non-governmental entities with respect to (A) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and defection of fraud and abuse in, programs and operations administered or financed by the Department, or (B) the identification and prosecution of participants in such fraud or abuse; and

[(4) to keep the Secretary and the Congress fully and currently informed by means of the reports required by section 4 and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by the Department, to recommend corrective action concerning such problems, abuses and deficiencies, and to report on the progress made in implementng such corrective action.

[(b) In carrying out the responsibilities specified in subsection (a)(1), the Inspector General shall have authority to approve or disapprove the use of outside auditors or to take other appropriate steps to insure the competence and independence of such auditors.

[(c) In carrying out the duties and responsibilities provided by this Act, the Inspector General shall give particular regard to the activities of the Comptroller General of the United States with a view to avoiding duplication and insuring effective coordination and cooperation.

[(d) The Inspector General shall establish within his office an appropriate and adequate staff with specific responsibility for devoting their full time and attention to antifraud and antiabuse activities relating to the medicaid, medicare, renal disease, and maternal and child health programs. Such staff shall report to the Deputy.

[REPORTS

[Sec. 204. (a) The Inspector General shall, not later than March 31 of each year, submit a report to the Secretary and to the Congress summarizing the activities of the Office during the preceding calendar year. Such report shall include, but need not be limited to—

[(1) an identification and description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of the Department disclosed by such activities;

[(2) a description of recommendations for corrective action made by the Office with respect to significant problems, abuses, or deficiences identified and described under paragraph (1);

[(3) an evaluation of progress made in implementing recommendations described in the report or, where appropriate, in previous reports; and

[(4) a summary of matters referred to prosecutive authorities and the extent to which prosecutions and convictions have resulted.

[(b) The Inspector General shall make reports on a quarterly basis to the Secretary and to the appropriate committees or subcommittees of the Congress identifying any significant problems, abuses, or deficiencies concerning which the Office has made a recommendation for corrective action and on which, in the judgment of the Inspector General, adequate progress is not being made.

[(c) The Inspector General shall report immediately to the Secretary, and within seven calendar days thereafter to the appropriate committees or subcommittees of the Congress, whenever the Office becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of the Department. The Deputy and Assistant Inspectors General shall have particular responsibility for informing the Inspector General of such problems, abuses, or deficiencies.

[(d) The Inspector General (A) may make such additional investigations and reports relating to the administration of the programs and operations of the Department as are, in the judgment of the Inspector General, necessary or desirable, and (B) shall provide such additional information or documents as may be requested by either House of Congress or, with respect to such matters within their jurisdiction, by any committee or subcommittee thereof.

[(e) Notwithstanding any other provisions of law, the reports, information, or documents required by or under this section shall be transmitted to the Secretary and the Congress, or committees or subcommittees thereof, by the Inspector General without further clearance or approval. The Inspector General shall, insofar as feasible, provide copies of the reports required under subsections (a) and (b) to the Secretary sufficiently in advance of the due date for their submission to Congress to provide a reasonable opportunity for comments of the Secretary to be appended to the reports when submitted to Congress.

[AUTHORITY; ADMINISTRATION PROVISIONS

[SEC. 205. (a) In addition to the authority otherwise provided by this Act, the Inspector General, in carrying out the provisions of this Act, is authorized—

[(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the Department which relate to programs and operations with respect to which the Inspector General has responsibilities under this Act;

[(2) to request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this Act from any Federal, State, or local governmental agency or unit thereof;

[(3) to require by subpena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this Act, which subpena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court;

[(4) to have direct and prompt access to the Secretary when necessary for any purpose pertaining to the performance of functions and responsibilities under this Act;

[(5) in the event that a budget request for the Office of Inspector General is reduced, before submission to Congress, to an extent which the Inspector General deems seriously detrimental to the adequate performance of the functions mandated by this Act, the Inspector General shall so inform the Congress without delay;

[(6) to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

[(7) to obtain services as authorized by section 3109 of title 5, United States Code, at daily rates not to exceed the equivalent rate prescribed for grade GS–18 of the General Schedule by section 5332 of title 5, United States Code;

[(8) to the extent and in such amounts as may be provided in advance by appropriations Acts, to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of this Act.

[(b)(1) Upon request of the Inspector General for information or assistance under subsection (a)(2), the head of any Federal agency involved shall, insofar as is practicable, and not in contravention of any existing statutory restriction, or regulation of the Federal agency from which the information is requested, furnish to the Inspector General, or to an authorized designee, such information or assistance.

[(2) Whatever information or assistance requested under subsection (a)(1) or (a)(2) is, in the judgment of the Inspector General, unreasonably refused or not provided, the Inspector General shall report the circumstances to the Secretary and to the appropriate committees or subcommittees of the Congress without delay.

[(3) In the event any record or other information requested by the Inspector General under subsection (a)(1) or (a)(2) is not considered to be available under the provisions of section 552a(b) (1), (3), or (7) of title 5, United States Code, such record or information shall be available to the Inspector General in the same manner and to the same extent it would be available to the Comptroller General.

[(c) The Secretary shall provide the Inspector General and his staff with appropriate and adequate office space at central and field office locations of the Department, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of such offices, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

[(d)(1) The Inspector General shall receive compensation at the rate provided for level IV of the Executive Schedule by section 5315 of title 5, United States Code.

[(2) The Deputy shall receive compensation at the rate provided for level V of the Executive Schedule by section 5316 of title 5, United States Code.

[TRANSFER OF FUNCTIONS

[SEC. 206. (a) There are hereby transferred to the Office of Inspector General the functions, powers, and duties of—

[(1) the agency of the Department referred to as the "HEW Audit Agency";

[(2) the office of the Department referred to as the "Office of Investigations"; and

[(3) such other offices or agencies, or functions, powers, or duties thereof, as the Secretary may, with the consent of the Inspector General, determine are properly related to the functions of the Office and would, if so transferred, further the purposes of this Act.

except that there shall not be transferred to the Inspector General under clause (3) program operating responsibilities.

[(b) The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available, of any office or agency the functions, powers, and duties of which are transferred under subsection (a) are hereby transferred to the Office of Inspector General.

[(c) Personnel transferred pursuant to subsection (b) shall be transferred in accordance with applicable laws and regulations relating to the transfer of functions except that the classification and compensation of such personnel shall not be reduced for one year after such transfer.

[(d) In any case where all the functions, powers, and duties of any office or agency are transferred pursuant to this subsection, such office or agency shall lapse. Any person who, on the effective date of this Act, held a position compensated in accordance with the General Schedule, and who, without a break in service, is appointed in the Office to a position having duties comparable to those performed immediately preceding such appointment shall continue to be compensated in the new position at not less than the rate provided for the previous position, for the duration of service in the new position.

[DEFINITIONS

[SEC. 207. As used in this Act—

[(1) the term "Secretary" means the Secretary of Health, Education, and Welfare;

[(2) the term "Department" means the Department of Health, Education, and Welfare;

[(3) the term "Inspector General" means the Inspector General of the Department;

[(4) the term "Deputy" means the Deputy Inspector General of the Department; and

[(5) the term "Federal agency" means an agency as defined in section 552(e) of title 5, United States Code, but shall not be construed to include the General Accounting Office.]

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Public Law 95-91 [S.826]; Aug. 4, 1977

DEPARTMENT OF ENERGY ORGANIZATION ACT

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[SEC. 208. (a)(1) There shall be within the Department an Office of Inspector General to be headed by an Inspector General, who shall be appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability and without regard to political affiliation. The Inspector General shall report to, and be under the general supervision of, the Secretary or, to the extent such authority is delegated, the Deputy Secretary, but shall not be under the control of, or subject to supervision by, any other officer of the Department.

⟦(2) There shall also be in the Office a Deputy Inspector General who shall be appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability and without regard to political affiliation. The Deputy shall assist the Inspector General in the administration of the Office and shall, during the absence or temporary incapacity of the Inspector General, or during a vacancy in that Office, act as Inspector General.

⟦(3) The Inspector General or the Deputy may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

⟦(4) The Inspector General shall, in accordance with applicable laws and regulations governing the civil service, appoint an Assistant Inspector General for Audits and an Assistant Inspector General for Investigations.

⟦(5) The Inspector General shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code, and the Deputy Inspector General shall be compensated at the rate provided for level V of the Executive Schedule under section 5316 of title 5, United States Code.

⟦(b) It shall be the duty and responsibility of the Inspector General—

⟦(1) to supervise, coordinate, and provide policy direction for auditing and investigative activities relating to the promotion of economy and efficiency in the administration of, or the prevention or detection of fraud or abuse in, programs and operations of the Department;

⟦(2) to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by the Department for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in its programs and operations;

⟦(3) to recommend policies for, and to conduct, supervise, or coordinate relationships between the Department and other Federal agencies, State and local governmental agencies, and nongovernmental entities with respect to (A) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Department, and (B) the identification and prosecution of participants in such fraud or abuse;

⟦(4) to keep the Secretary and the Congress fully and currently informed, by means of the reports required by subsection (c) and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by the Department, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action; and

[(5) to seek to coordinate his actions with the actions of and Comptroller General of the United States with a view to avoiding duplication.

[(c) The Inspector General shall, not later than March 31 of each year, submit a report to the Secretary, to the Federal Energy Regulatory Commission, and to the Congress summarizing the activities of the Office during the preceding calendar year. Such report shall include, but need not be limited to—

[(1) an identification and description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of the Department disclosed by such activities;

[(2) a description of recommendations for corrective action made by the Office with respect to significant problems, abuses, or deficiencies identified and described under paragraph (1);

[(3) an evaluation of progress made in implementing recommendations described in the report or, where appropriate, in previous reports; and

[(4) a summary of matters referred to prosecutive authorities and the extent to which prosecutions and convictions have resulted.

[(d) The Inspector General shall report immediately to the Secretary, to the Federal Energy Regulatory Commission as appropriate, and, within thirty days thereafter, to the appropriate committees or subcommittees of the Congress whenever the Office becomes aware of particularly serious or flagrant problems, abuses or deficiencies relating to the administration of programs and operations of the Department. The Deputy and Assistant Inspectors General shall have particular responsibility for informing the Inspector General of such problems, abuses, or deficiencies.

[(e) The Inspector General (1) may make such additional investigations and reports relating to the administration of the programs and operations of the Department as are, in the judgment of the Inspector General, necessary or desirable, and (2) shall provide such additional information or documents as may be requested by either House of Congress or, with respect to matters within their jurisdiction, by any committee or subcommittee thereof.

[(f) Notwithstanding any other provision of law, the reports, information, or documents required by or under this section shall be transmitted to the Secretary, to the Federal Energy Regulatory Commission, if applicable, and to the Congress, or committees or subcommittees thereof, by the Inspector General without further clearance or approval. The Inspector General shall, insofar as feasible, provide copies of the reports required under subsection (c) to the Secretary and the Commission, if applicable, sufficiently in advance of the due date for the submission to Congress to provide a reasonable opportunity for comments of the Secretary and the Commission to be appended to the reports when submitted to Congress.

[(g) In addition to the authority otherwise provided by this section, the Inspector General, in carrying out the provisions of this section, is authorized—

[(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, and other material available to the Department which relate to programs and operations with respect to which the Inspector General has responsibilities under this section;

[(2) to require by subpena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this section, which subpena, in the case of contumacy or refusal, to obey, shall be inforceable by order of any appropriate United States district court; and

[(3) to have direct and prompt access to the Secretary when necessary for any purpose pertaining to the performance of functions under this section.]

* * * * * * *

SECTION 23 OF THE RAILROAD RETIREMENT ACT OF 1974

[INSPECTOR GENERAL

[SEC. 23. For the purposes of the Inspector General Act of 1978 (5 U.S.C. App.) the Railroad Retirement Board is an "establishment" and the chairman of the Railroad Retirement Board is the "head of the establishment" with respect to such Board. For the purpose of section 2 of such act, the Railroad Retirement Board is one of "such establishments."]

* * * * * * *

SECTION 1105 OF TITLE 31, UNITED STATES CODE

SEC. 1105(a) On or before the first Monday after January 3 of each year (or on or before February 5 in 1986), the President shall submit a budget of the United States Government for the following fiscal year. Each budget shall include a budget message and summary and supporting information. The President shall include in each budget the following:

(1) * * *

* * * * * * *

[(25) a separate statement, for each agency having an Office of Inspector General, of the amount of the appropriation requested for the Office.]

(25) a separate appropriation account for appropriations for each Office of Inspector General established by the Inspector General Act of 1978.

* * * * * * *

SECTION 3512 OF TITLE 31, UNITED STATES CODE

SEC. 3512. EXECUTIVE AGENCY ACCOUNTING SYSTEMS

(a) * * *

(b)(1) To ensure compliance with subsection (a)(3) of this section and consistent with standards the Comptroller General prescribes, the head of each executive agency shall establish internal accounting and administrative controls that reasonably ensure that—

(A) obligations and costs comply with applicable law;

(B) all assets are safeguarded against waste, loss, unauthorized use, and misappropriation; and

(C) revenues and expenditures applicable to agency operations are recorded and accounted for properly so that accounts and reliable financial and statistical reports may be prepared and accountability of the assets may be maintained.

(2) Standards the Comptroller General prescribes under this subsection shall include standards to ensure the prompt resolution of all audit findings. *Such standards shall include (A) a definition of audit resolution consistent with section 5(f)(5) of the Inspector General Act of 1978, and (B) a standard to ensure that an audit determination will be made on each audit report within 6 months after the completion of such report, in the case of an audit performed by a Federal auditor, and within 6 months after receipt by the executive agency responsible for the program concerned, in the case of each audit performed by a non-Federal auditor. No order, circular, or directive prescribed by the Director of the Office of Management and Budget shall include an inconsistent definition or standard with respect to audit resolution.*

* * * * * * *

Section 410 of Title 39, United States Code

SEC. 410. APPLICATION OF OTHER LAWS

(a) * * *

(b) The following provisions shall apply to the Postal Service:

(1) * * *

* * * * * * *

(6) sections 2000d, 2000-1-2000d-4 of title 42 (title VI, the Civil Rights Act of 1964); **[**and**]**

(7) section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668)**[**.**]***;*

(8) **[**The**]** *the* provisions of the Act of August 12, 1968 (42 U.S.C. 4151-4156)**[**.**]***; and*

(9) the provisions of section 8D of the Inspector General Act of 1978.

APPENDIX A

[From the Department of the Treasury Order, Number: 100-02]

Date: January 13, 1987.

Establishment of the Office of the Inspector General and Delegation of Authority to the Inspector General.

By virtue of my authority as Secretary of the Treasury, including the authority contained in 31 U.S.C 321(b), and 5 U.S.C 301 and 302, it is hereby ordered that:

1. Establishment of the Office of the Inspector General (OIG)

a. There is hereby established within the Department of the Treasury, *the Office of the Inspector General,* which shall conduct and supervise audits and investigations relating to programs and operations within the Department as detailed in this order.

b. *The Office of the Inspector General* shall also provide leadership and coordination and recommend policies for activities designed to:

(1) promote economy, efficiency, and effectiveness in the administration of Departmental programs and activities;

(2) prevent and detect fraud, waste, and abuse in Departmental programs and operations; and

(3) inform the Secretary and Deputy Secretary of any problems or concerns with the administration of such programs and operations and the need for and progress of corrective action.

c. *The Office of the Inspector General* shall be independent of all other offices and bureaus within the Department.

d. *The head of the Office of the Inspector General* shall be the Inspector General (IG) who shall be appointed by the Secretary of the Treasury and who shall report to and operate under the general supervision of the Secretary and/or the Deputy Secretary.

e. *No officer or employee of the Department* shall prevent the Inspector General from initiating, carrying out, or completing any duly authorized audit or investigation, or prevent any duly appointed officer or employee of the Office of the Inspector General from obtaining access to any information or documentation which the Inspector General has determined is necessary to the execution of an audit or investigation.

2. Authority and Responsibility of the Inspector General for the Conduct and Oversight of Investigations

a. *The Inspector General* is hereby delegated the authority to receive, analyze and evaluate allegations of illegal acts, violations of the Rules of Conduct of the Treasury Department and of the bureaus, violations of the merit system, and any other misconduct concerning any official or employee of any Treasury office or bureau or, in the case of alleged illegal acts or misconduct, any Treasury contractor, subcontractor, or offeror.

b. *All employees and officials of the Department of the Treasury* shall report to the Inspector General all matters which they believe raise questions of illegality or wrongdoing pursuant to paragraph a. above. Employees and officials who work in bureaus or offices with internal affairs or inspection offices, shall report such matters either to the head of those offices or to the Inspector General.

c. *The Inspector General* is hereby delegated the authority to initiate, organize, conduct, direct and control investigations of any allegations received pursuant to paragraph a. above, concerning the Department's senior officials, i.e., Presidential appointees, SES members, and GS or GM-15s and above.

d. If the allegation to be investigated involves a non-senior official or employee of a Treasury law enforcement bureau, the Inspector General shall refer the investigation to that bureau's internal affairs or inspection office and shall receive a full report of the investigation and any action taken on the matter referred.

e. If the allegation to be investigated involves a non-senior official or employee of a Treasury bureau or office that does not have an internal affairs or inspection office, the Inspector General may refer the investigation to a bureau which has such an office, which will undertake the investigation and will prepare a full report for the Inspector General of the investigation and of any action taken on the matter referred.

f. Paragraphs d. and e. above notwithstanding, the Inspector General shall conduct any investigation which he or she is directed to conduct by the Secretary or Deputy Secretary concerning any allegation of misconduct by an official, employee or contractor of the Treasury. The Inspector General may also conduct any investigation which involves alleged notorious conduct or other matter which, in his or her opinion, is especially sensitive or of Departmental significance.

g. If an allegation involves a matter which is appropriate for the Departmental or a bureau grievance or appeal procedure, or other rountine management action, the Inspector General may refer such matter to the appropriate office or bureau for handling.

h. This Order does not change or reduce the authority of Treasury offices or bureaus which had established internal affairs and inspection offices as of July 18, 1978, to conduct investigations in accordance with their own internal procedures, with the exception of those investigations being conducted by the Inspector General. However, when the Inspector General gives notice to a bureau or office that an OIG investigation is being conducted in that bureau or office, no internal investigation will be initiated and any ongoing investigation into the same matter will immediately cease.

i. *All law enforcement bureau internal affairs and inspection offices* shall periodically report to the Inspector General their significant current investigative activities.

j. *The Inspector General* may review, evaluate, and approve all Departmental and bureau programs, plans, policies and operations for investigative misconduct and may make recommendations for changes.

k. *The Inspector General* shall require, receive, review, and analyze all reports informing the Secretary or Deputy Secretary of any significant problems, abuses, or deficiencies disclosed in any bureau or office investigation and the actions taken to correct them.

l. *The Inspector General* may, at his or her discretion, report the results of the investigation of any senior official to the Secretary or Deputy Secretary or other appropriate management official for action.

m. *The Inspector General* is hereby delegated authority to receive all matters referred to the Department of the Treasury by the Special Counsel of the Merit Systems Protection Board, regarding allegations or prohibited personnel practices. He or she may investigate such matters or, as appropriate, may refer such matters for investigation to a law enforcement bureau internal affairs or inspection office, except for matters concerning the Internal Revenue Service (IRS), which shall be referred directly to that Bureau.

n. *The Inspector General* shall receive and review reports of investigations by any bureau or office conducting such investigations, except for IRS, and may prepare or delegate to the appropriate bureau or office for preparation, final reports to the Special Counsel for review and signature of the Deputy Secretary or Under Secretary as the Secretary's designees, except for IRS which shall prepare its own final reports to the Special Counsel.

3. Authority and Responsibility of the Inspector General for the Conduct and Oversight of Audits

a. *The Inspector General* is hereby delegated complete authority for performing internal audits of all Treasury bureaus and offices, with the exception of the law enforcement bureaus. The law enforcement bureaus are the: Internal Revenue Service, U.S. Customs Service, Bureau of Alcohol, Tobacco and Firearms, and U.S. Secret Service.

b. *The Inspector General* may audit or authorize law enforcement bureau internal affairs or inspection offices to audit any Treasury program, activity, or function, including any Treasury or bureau contractor, subcontractor, or offeror.

c. *The Inspector General* shall coordinate all requests submitted by IGs from other Government departments and agencies for audit services within the Department.

d. *The Inspector General and, as appropriate, the Heads of Internal Audit in the law enforcement bureaus* shall distribute copies of final audit reports to all headquarters and field officials responsible for taking corrective action on matters covered by those reports.

e. *The Inspector General* shall keep the Secretary or Deputy Secretary informed of any significant problems, abuses, or deficiencies disclosed in audits and the actions taken to correct them.

f. *The Inspector General* is responsible for formulating Departmental audit policies and priorities and assuring implementation of Federal audit standards in the Department.

g. *The Inspector General* may review, evaluate, and approve law enforcement bureau internal affairs and inspection offices' programs, plans, policies, reports and operations for internal auditing and may make recommendations for changes.

h. *The Inspector General* shall receive and may review and analyze all law enforcement bureau internal affairs and inspection offices' audit plans and reports as a basis for evaluating audit services to management.

i. *All law enforcement bureau internal affairs and inspection offices* shall periodically report to the Inspector General their significant current audit activities.

4. Authority of the Inspector General for Intelligence Activities

a. Pursuant to Section 4 of Executive Order 12334, *the Inspector General shall, together with the General Counsel,* to the extent permitted by law, report to the President's Intelligence Oversight Board, concerning intelligence activities that he or she has reason to believe may be unlawful or contrary to Executive order or Presidential directive.

b. *All Treasury employees* shall report to the Inspector General, the General Counsel, or the head of the inspection or internal affairs office of their bureau, any matters which they believe raise questions of propriety or legality under Executive Order 12333.

c. At appropriate intervals, *The Inspector General* shall review any foreign intelligence activities of the Treasury Department to determine whether any such activities raise questions of propriety under Executive Order 12333. Any questions arising from this review as to the legality of such activities shall be referred to the General Counsel.

d. *All law enforcement bureau internal affairs and inspection offices* shall review at appropriate intervals the activities of their bureaus in their relations with the United States foreign intelligence agencies to determine whether such activities raise questions of legality or propriety. Any questions of legality or propriety arising from this review shall be reported to the Inspector General who shall refer to the General Counsel any illegal activities.

e. *The Inspector General, together with the General Counsel,* shall review any agreement between the Treasury Department or any of its bureaus or offices and the Central Intelligence Agency (CIA), dealing with arrangements of a continuing nature.

f. *The Inspector General, together with the General Counsel,* shall, when requested, consult with the Office of Intelligence Support regarding CIA or Treasury requests for support or assistance where there is no current written arrangement for such support or assistance.

g. *The Inspector General shall, together with the General Counsel,* consult with the Under Secretary, when requested, with regard to arrangements for support or assistance between the Treasury and any other intelligence agency of the Federal government except for arrangements between the Federal Bureau of Investigation and the Internal Revenue Service, which shall be the responsibility of the Commissioner of Internal Revenue.

5. Personnel Authority

a. *The Inspector General* may obtain as needed, under procedures he or she develops, investigative, audit, and support personnel from law enforcement bureau internal affairs and inspection offices for conducting investigations or audits under his or her direct supervision. Any detailed personnel shall remain on the rolls of the service or office from which they were detailed but will report exclusively to the Inspector General regarding the matter being investigated or audited.

b. *Bureau heads* shall consult with the Inspector General in recruiting and selecting candidates to head the internal affairs or inspection offices of the law enforcement bureaus. Bureau heads shall, prior to issuance, submit annual performance evaluations of incumbent heads of internal affairs or inspection offices to the Inspector General for review.

6. Regulatory Authority

The Inspector General is hereby delegated authority to promulgate any rules, regulations, directives, memoranda of understanding, policies and procedures necessary to implement his or her duties and responsibilities pursuant to this Order.

7. Cancellation and Consolidation of Previous Orders

a. This Order supersedes the following Treasury Department Orders (TDO):

(1) TDO 256, "Establishment of the Position of Inspector General," dated July 18, 1978;

(2) TDO 101-14, "Transfer of the Office of Audit to the Inspector General," dated February 20, 1980; and

(3) TDO 101-28, "Transfer of Internal Audit Function and Internal Investigative Functions and Positions to the Office of the Inspector General," dated June 7, 1982.

b. This Order supersedes those parts of the following orders which set forth duties of the Inspector General:

(1) TDO 240 (Revision 1), "Liaison Between Subordinate Organizational Units of the Treasury and the Central Intelligence Agency," dated July 18, 1978;

(2) TDO 246 (Revision 1), "Responsibilities for Oversight of Foreign Intelligence Activities Under Executive Order 12036," dated July 18, 1978. Inspector General's duties are set forth in paragraph number 1, 3, 5, and 6;

APPENDIX B

Three case studies presented at the Committee's April 9th hearing demonstrate OIA's lack of authority, competence and independence.

Case Study No. 1: *OIA is Not Informed of Potential Wrongdoing By A Commissioner or His Staff*

On or about June 15, 1983 a Vice President of Middle South Service, Inc.—a company affiliated with the utility licensed to operate the Waterford nuclear power plant in Louisiana—dictated a memo to other senior executives affiliated with the utility. The memo from Mr. George White states:

> Attached is a memorandum which I have received from sources *inside* the Nuclear Regulatory Commission regarding Waterford Quality Assurance matters. This memo is for your information but *I would hope that you would limit its distribution to protect the source within the NRC.* (Emphasis added).

The attached NRC memorandum is dated June 8, 1983. Thus, it took less than 7 days for this NRC memorandum to be leaked from the NRC and reach the attention of the NRC licensee.

The leaked NRC memorandum is an internal agency document addressed to the head of the NRC's Office of Inspection and Enforcement. It contains a discussion of allegations raised by a Louisiana-based reporter concerning "base mat" cracks in the concrete under the Waterford plant's containment vessel, as well as "evidence to suggest collusion" by NRC inspectors "with the Licensee". The author of the NRC memorandum, a Technical Assistant to one of the Commissioners, concluded: "In view of this, I would strongly suggest that appropriate measures be taken to assure an objective review of [the reporter's] allegations". A copy of this memorandum was sent to each of the Commissioner's offices.

This was a sensitive document, containing information that was obviously not intended to be shared by the NRC with the licensee outside the appropriate channels. Subsequently, several NRC offices, including the Office of Inspection and Enforcement, conducted investigations of the issues raised by the reporter.

In March 1985, an investigator in the NRC's Office of Investigations accidentally found a copy of Mr. White's cover memo and the leaked NRC memo while examining the licensee's files and brought the matter to the attention of OI Director Ben Hayes. Hayes then brought the documents to the attention of NRC Chairman Nunzio Palladino because the evidence suggested that the source of the NRC's internal memo was the Office of Commissioner Thomas Roberts. Hayes told Palladino that he believed the matter should be investigated by the NRC's Office of Inspector and Auditor.

Palladino responded in writing to Hayes that he had discussed the matter with Roberts, and that:

> Since, under the reorganization plan of 1980, supervision of personnel within the immediate office of each member of the Commission is that Commissioner's responsibility, Commissioner Roberts believes (and I concur) that this is a matter for him to deal with. Therefore, you should discuss it with him as soon as possible.

Subsequently, Hayes met with Commissioner Roberts as directed. At the meeting Commissioner Roberts compared his copy of the leaked NRC document with the one OI had found in the licensee's files. The copies were identical. Roberts asked why Hayes had not initially brought the matter directly to him. Roberts stated that he had asked his staff if they had distributed the memo to the Middle South utility, but each staff member said no. Roberts indicated that the memo might have been obtained and sent to the utility by office cleaning personnel or interns temporarily assigned to his office. Roberts then directed Hayes to give him *all* the copies of the documents in OI's possession, including all the notes Hayes or others had made on the issue. All of this occurred within a few months of Mr. Roberts' confirmation for a second full term as an NRC Commissioner. This episode was not made known to the Senate Committee reviewing Roberts' qualifications.

The Committee finds there are troubling aspects to this episode, chief among them that this matter was not referred to OIA for investigation. The significance of this decision is that potential wrongdoing by Commissioners or their staff appear to be off-limits to OIA. Moreover, at no time prior to the Committee's April 9th hearing did the NRC undertake a vigorous investigation of the matter. For example, no one questioned Mr. White under oath concerning the identity of his "source" within the NRC. In his sworn statement to the Committee made in 1987, Mr. White claimed he could not recall any facts related to his receipt of the NRC memo. He did recall that he lunched with Commissioner Roberts in 1986, and Roberts failed to raise the matter with him.

In his testimony before the Committee on April 9th, Roberts stated that he had deliberately destroyed his copies of the potentially incriminating documents. On April 21, Senator Glenn referred the matter of Roberts' handling of these documents to the U.S. Attorney for the District of Columbia, and called for Roberts to resign from office. On April 28, Roberts wrote Senator Glenn that he was mistaken in his recollection that he had destroyed the documents, and that a search of his files *after* the April 9th hearing caused him to locate copies of the documents in his possession.

This entire episode underscores the need for a statutory Office of Inspector General in the NRC, with the authority and expertise necessary to investigate potential wrongdoing wherever it occurs, even if it involves the Office of a Commissioner.

Case Study No. 2: *OIA's Incompetent Investigation of the NRC's Top Staff Person*

In April 1986, OIA received allegations of potential wrongdoing by the Executive Director for Operations, Victor Stello, Jr. The subsequent OIA investigation was conducted so incompetently, and pursued with such lack of vigor that it casts doubt upon the ability of the NRC to effectively review a senior agency manager's conduct.

In December 1985, Commissioner James Asselstine visited a troubled Tennessee Valley Authority (TVA) nuclear plant construction site at Watts Bar, Tennessee. TVA had already requested permission to load fuel and begin operating. Asselstine was told by TVA personnel that the facility did not comply with Appendix B, the compendium of NRC requirements and regulations concerning the quality of construction of nuclear power plants. Since TVA would not be allowed to load fuel and begin operations at Watts Bar unless it was in compliance with Appendix B, these were very serious charges. Based on these allegations, on January 3, 1986, the NRC wrote to TVA, asking TVA to state under oath and within 6 days whether Watts Bar complied with Appendix B.

At this time, former Navy Admiral Steven A. White had been brought in to lead TVA's nuclear program. White participated in drafting a written response to the NRC's January 3, 1986, letter. The letter posed a problem for TVA. If TVA answered that the plant complied with Appendix B, and it was later proven that it did not, TVA could be subject to possible criminal prosecution or civil penalties imposed by the NRC. On the other hand, if TVA stated that Watts Bar failed to comply with Appendix B, the NRC might shut down construction at the site.

On or about March 20, 1986, White telephoned Stello to discuss TVA's draft response. Stello returned White's call while riding in an NRC van accompanied by two senior NRC officials, Harold R. Denton and James E. Taylor. During the conversation Stello discussed with White how TVA might answer the letter. On the day following this discussion, White submitted to the NRC a different version of the TVA response than the one he had discussed with Stello. Subsequently, Denton and Taylor informed OI Director Ben Hayes of Stello's telephone conversation. During this entire period of time, OI was conducting an investigation of alleged material false statements submitted by TVA on its request to load fuel at Watts Bar. Hayes, in turn, requested that OIA investigate Stello's conduct.

The central issue for the OIA investigation was whether Stello provided any inappropriate advice or assistance to White as he prepared TVA's response to the critical NRC inquiry. At a minimum, the OIA investigators would need to know exactly what statements were made by both parties to the telephone call.

Hayes, who had not been present at the conversation, was formally deposed by OIA in April 1986, a few days after he referred the issue to OIA. Neither Denton or Taylor, who heard Stello's part of the conversation, were ever asked to submit sworn statements to OIA, and informal interviews with them were not conducted by OIA until June 1986. At his interview Taylor stated the conversation was "inappropriate" and both Denton and Taylor stated they were "uncomfortable" with Stello's conversation. The failure to take formal statements from Denton and Taylor has caused significant problems in evaluating the propriety of Stello's conduct. For example, at no point in the interview statement of Mr. Denton does it indicate that Denton himself had participated in a long telephone call with White on March 20, 1986, concerning the same issues. Although Denton recalls describing this call to OIA Director Sharon Connelly and several OIA investigators in his informal interview, no record of this fact appears in the OIA report on this matter.

OIA waited until July 30, 1986 to formally depose Stello. The reason for such a delay is not apparent. During this deposition Stello stated that he tried to indicate to White his doubts as to whether White had enough information to answer the NRC inquiry, and suggested that White include in his letter some explanation that White was still looking at the issue and would provide more information as it became available. Stello indicated in his deposition that he may have had more than one conversation with White on this matter. Based on the interviews with Denton and Taylor, and the depositions of Stello and Hayes, OIA concluded that Stello's conduct was not improper.

During its investigation, OIA never contacted TVA's White, effectively precluding the NRC's ability to evaluate both sides of the conversation and the accuracy of Stello's statements. Given that this case involved the Executive Director for Operations, the NRC's top Staff person, it would seem incumbent on OIA to have fully investigated and resolved this matter in a timely manner. At worst this hole in the investigation could leave an impression that OIA did not adequately investigate because the results might embarrass the EDO. This situation leaves Stello in a position where his credibility and conduct have been questioned, and the passage of time makes it increasingly difficult to ascertain what actually happened.

Committee staff interviewed White in June 1987. Had OIA interviewed White it would have found that White and Stello had at least three telephone conversations concerning TVA's draft response in a single twenty-four hour period; and that he had two telephone conversations with Denton. White, assisted by contemporaneously created notes and telephone toll records, was able to recall that on the same evening as the van conversation, he spoke with Stello at his home. According to White, during this conversation, Stello specifically suggested that White should not answer the NRC's letter at that time, but should study the issue further. White characterized Stello's position on this issue during this conversation as being very different from the position Stello took in previous conversations. White did not know what caused Stello to change his opinion. White also indicated that he spoke with Stello again about the letter the following morning, to confirm changes he had made based on discussions with Denton.

According to White, TVA's changes to the letter were based on White's conversation with Denton. White maintained that Stello and Denton had been proper in their telephone conversations with him. It was, of course, Denton who was "uncomfortable" with Stello's van conversation. Committee staff took depositions of Stello and Denton in July 1987. During this deposition Stello did not deny having the other phone conversations White had recalled, but stated he could not recall such conversations, or their content. He claimed again there was nothing inappropriate in his conversations with White. Denton stated that he believed Stello was providing advice to White that crossed the line of propriety, considering the entire TVA problem.

The Committee finds that OIA's investigation of Stello failed to gather all of the relevant facts. In presenting this case study, the Committee does not attempt to draw any conclusions about whether Stello engaged in improper conduct.

Case Study No. 3: *OIA's Lack of Objectivity and Independence*

In 1986 NRC inspectors in Region IV (Dallas) accused their superiors of harassing and intimidating them for reporting safety problems at the Comanche Peak nuclear power plant. This troubled plant has been under construction for 14 years. The Comanche Peak case provides an inside view of a general lack of regulatory zeal on the part of the NRC's Region IV management, and OIA's lack of objectivity and independence in reporting on this problem.

Between 1984 and 1986, NRC inspectors from Region IV conducted inspections and audits of the possible extent of quality assurance and quality control breakdowns, and related engineering and technical deficiencies at Comanche Peak. The problems the inspectors found were significant and potentially affected the safety and licensability of the plant, as well as the health and safety of the public living in central Texas.

The inspectors cited their negative findings in draft inspection reports, and categorized them as violations of NRC regulations, deviations from commitments, or unresolved items. Beginning in the fall of 1985, the Chief of Region IV's Comanche Peak Task Group and the Division Director began vigorously to challenge inspection findings, and in some cases suggest that they be removed or downgraded to a less serious category. When inspectors did not agree to remove or downgrade the findings, certain senior managers subjected the inspectors to harassment and intimidation. Some of the inspectors gave into the pressure to change their findings. Testimony received by the Committee indicates that the basis for the intimidating conduct was Region IV management's concern that negative inspection findings might reflect unfavorably on the utility's performance and reduce its chances of getting a license.

On one occasion, the Region issued a report of a major inspection without including several of the violations cited in the draft report. The Region issued the report to the public using the draft inspectors' signature sheet as part of the final report. One of the inspectors, Shannon Phillips, testified at the Committee's April 9th hearing that, when he learned of this incident, he knew he had to report the matter and his overall concerns to someone independent of Region IV management. He was aware of OIA's reputation of being unable or unwilling to investigate this type of serious management issue. Therefore, Phillips raised his concerns with Commissioner Asselstine in March 1986, and other Region IV inspectors apparently did the same.

The inspectors' allegations were referred to OIA's Assistant Director for Investigations, George Mulley, the senior OIA investigator in whom Phillips had expressed confidence due to Mulley's personal reputation for professionalism. Asselstine required that transcripts be kept of OIA's interviews with all witnesses. Mulley's field work lasted five months (April–July 1986), and involved interviews with numerous inspectors, consultants, and eventually

Region IV managers. Mulley testifed that after he heard Phillips' and other inspectors' evidence, he became concerned that NRC managers in the Region and Washington would interfere with his investigation if they knew the full scope of the management problems in Region IV.

In June 1986 Mulley learned that the Administrator of Region IV was going to remove Phillips from the Comanche Peak site because Phillips was getting other people to cooperate with the OIA investigation. Mulley got NRC headquarters to stop the removal, but from that point forward, he came under pressure from the NRC's Executive Director for Operations, Victor Stello, Jr., to complete the investigation and write the report. At the Committee April 9th hearing, Stello agreed: "[The NRC's] Regional IV office has been under criticism for quite some time. I have been and continue to be very, very concerned about morale in that Region . . . If what you heard was pressure, that is exactly what I did. I felt the need to have that investigation done, and done quickly. The impact it was having was great." [1]

Mulley testified that given this pressure, he felt he had no choice but to limit his investigation to the specific concerns originally raised by Phillips and ignore, for the time being, the other witnesses' complaints of Region IV's mismanagement of safety issues involving other plants and the evidence of harassment, intimidation and pressure on other inspectors. The pressure to finish the report came also from OIA Director Sharon Connelly. Mulley requested a meeting with Chairman Lando Zech, Jr. to determine if the pressure was actually coming from the Chairman's office, as Connelly indicated. Chairman Zech assured Mulley that he should not be hasty in the course of the investigation or writing the report. Mulley pulled together the 3,000 page investigative record and wrote a draft report containing negative conclusions about management of Region IV, including that managers acted inappropriately to limit violations assessed at Comanche Peak and that Phillips was harassed and intimidated by Region IV management.

Along with a team of OIA auditors, Director Connelly substantially modified Mulley's draft report, removing the conclusions Mulley had written concerning Region IV management problems. Also deleted were quotations obtained by Mulley from Region IV managers which substantiated the conclusions Mulley had reached and demonstrated the lax enforcement attitudes of Regional management, *e.g.*, the Division Director's statement about verifying Comanche Peak's safety in the absence of critical records: "We shouldn't worry about the past, and you just go out and kind of kick the tires and if it feels good, you go on from there." [2]

The final report, as shaped by Director Connelly, focused on the merits of the technical issues underlying the violations the inspectors had found at Comanche Peak, an area outside the expertise of OIA. It appears that the removal of the conclusions and quotations resulted in a minimizing of the severity of the Region IV management problem. This editing also prevented individual Region IV managers from being informed that lax enforcement attitudes are not condoned by the NRC and it denied the Commissioners the opportunity to protect the integrity of the NRC's enforcement program.

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[1] April 1987 Senate Hearing [Transcript, pp. 170–71].

[2] April 1987 Senate Hearing [Transcript, p. 142].

The report was released in November 1986 and within days, distributed throughout the agency in such a way that all of the witnesses who had talked to Mulley were identified. The widespread distribution was unusual, and witnesses complained about being betrayed "for possible future retaliation." After distribution of the report, one of the Region IV managers under investigation was awarded a monetary bonus for his work at Comanche Peak. Mulley went to Stello's office to state his concerns about the inappropriateness of this action. On the other hand, Phillips received the first derogatory comments in his NRC career on his performance appraisal. The NRC later agreed to withdraw the comments after Phillips filed a grievance.

The Comanche Peak case demonstrates the failure of OIA to investigate and report on serious management problems in the agency. This is evidenced by the narrow focus of the investigation, the pressure from the top NRC Staff official to complete the investigation out of his concern for the "morale" in Region IV, and the Director's failure to communicate to the Commission the full extent of the management problems clearly identified in the 3,000 page investigative record.

APPENDIX C

CHART NO. I

Federal entity	Fiscal year 1986 BAI (thousands)	Employment [1] FTE	PCIE cat.	Designated in S. 908
ACTION	144,782	483	I	X
Administrative Conference of the United States	1,369	26	II	
Advisory Committee on Federal Pay	201	2	II	
Advisory Commission on Intergov'tal Relations	1,953	23	II	
Advisory Council on Historic Preservation	1,507	33	II	
African Development Foundation	3,706		II	
Alaska Land Use Council				
Alaska Natural Gas Transportation System Office of Federal Inspector	230		II	
American Battle Monuments Commission	11,921	387	II	
Appalachian Regional Commission	116,945	23	I	X
Architectural and Transportation Barriers Compliance Board	1,890	26	II	
Arms Control and Disarmament Administration	24,738	208	II	
Barry Goldwater Scholarship Foundation	[2] 40,000	2		
Board for International Broadcasting	117,084	9	II	X
Commission on Fine Arts	364	6	II	
Commission on Civil Rights	11,771	193	II	
Commission on Constitution Bicentennial	12,226	79		
Commission on Education of the Deaf	[2] 750	5		
Commission on Ukraine Famine	383	5		
Center for Cultural and Technical Interchange Between East and West	[7] 19,858			
Columbus Quincentenary Commission	[2] 220	3	II	
Commission for Purchase from the Blind and Other Severely Handicapped	699	11	II	
Commodity Futures Trading Commission	27,983	480	I	X
Consumer Product Safety Commission	34,452	556	I	X
Corporation for Public Broadcasting	159,500	0	I	X
Delaware River Basin Commission	161	2	II	
Equal Employment Opportunity Commission	157,905	3,107	I	X
Export-Import Bank	[3] 17,568	326	II	
Farm Credit Administration	[3] 23,176	353	I	X
Federal Communications Commission	90,341	1,820	I	X
Federal Deposit Insurance Corporation	[4] 472,000	3,655	I	X
Federal Election Commission	11,898	230	I	X
Federal Home Loan Bank Board	[3] 29,150	259	I	X
Federal Labor Relations Authority	16,330	269	I	X
Federal Maritime Commission	11,360	206	I	X
Federal Mediation and Conciliation Service	22,388	329	II	
Federal Mine Safety and Health Review Commission	3,651	47	II	
Federal Reserve Board of Governors	[6] 84,197	1,496	I	X
Federal Retirement Thrift Investment Board	250	0		
Federal Savings and Loan Insurance Corporation	[3] 1,378	15	I	
Federal Trade Commission	62,683	1,107	I	X
Franklin Roosevelt Memorial Commission	20	0	II	
Harry Truman Scholarship Foundation	634	4	II	
Holocaust Memorial Commission	2,021	29	II	
Illinois and Michigan Canal National Heritage Corridor Commission	236	1		
Institute for Museum Services	20,474	13	II	
Intelligence Community Staff	21,001	212		
Inter-America Foundation	11,454	66	II	
International Trade Commission	27,370	505	I	X
Interstate Commerce Commission	46,108	804	I	X
James Madison Fellowship Foundation	[2] 33,842	4		

CHART NO. I—Continued

Federal entity	Fiscal year 1986 BA[1] (thousands)	Employment [1] FTE	PCIE cat.	Designated in S. 908
Japan-United States Friendship Commission	2,563	4	II	
Jefferson National Expansion Memorial Commission	72	1		
Legal Services Corporation	292,363	117	I	X
Marine Mammal Commission	861	10	II	
Merit Systems Protection Board	19,140	325	II	
Office of Special Counsel	4,396	84		
National Afro-American History Commission	191			
National Archives and Records Administration	97,004	1,812	I	X
National Board for Promotion of Rifle Practice	875	16		
National Capital Planning Commission	2,580	50	II	
National Consumer Coop Bank				
National Commission on Libraries and Information Science	660	11	II	
National Council on Employment Policy				
National Council on Handicapped	732	9	II	
National Council on Public Works Improvement	[2] 1,750	5	II	
National Credit Union Administration	0	625	I	X
National Critical Materials Council	475			
National Endowment for Democracy	[7] 17,226	0		
National Endowment for the Arts	158,537	251	I	X
National Endowment for the Humanities	134,582	248	I	X
National Institute of Building Sciences	753	0	II	
National Labor Relations Board	129,055	2,421	I	X
National Mediation Board	6,085	57	II	
National Rail Passenger Corporation (AMTRAK)	[8] 562,237	0	I	X
National Science Foundation	1,294,060	1,124	I	X
National Transportation Safety Board	21,341	323	II	
Navajo-Hopi Relocation Commission	21,395	57		
Neighborhood Reinvestment Corporation	17,669	201	II	
Occupational Safety and Health Review Commission	5,647	78	II	
Office(s) of Independent Counsel(s)				
Overseas Private Investment Corporation		136		
Panama Canal Commission	450,534	8,336	I	X
Peace Corps	120,410	1,013	I	X
U.S. Institute for Peace	[2] 625	2		
Pennsylvania Avenue Development Corporation	2,215	37	II	
Pension Benefit Guaranty Corporation	[3] 31,631	459	II	X
U.S. Postal Service	715,836	739,511		X
Postal Rate Commission				
Potomac River Basin Commission	79	0	II	
Securities and Exchange Commission	106,323	1,898	I	X
Selective Service System	26,128	268	II	
U.S. Sentencing Commission	1,053	37		
Smithsonian Institution	169,384	3,734	I	X
State Justice Institute	8,344	0		
Susquehanna River Basin Commission	156	2	II	
Tennessee Valley Authority	[9] 99,528	27,613	I	X
Washington Metropolitan Transit Authority	51,664	0		

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[1] Appendix, Budget of the United States Government, Fiscal Year 1988.
[2] Fiscal Year 1987.
[3] Limitation on Administrative Expenses in Appropriations Act, rather than budget authority.
[4] Statutory Borrowing Authority, rather than budget authority.
[5] Total Program Costs (no appropriations).
[6] Fiscal Year 1988.
[7] Appropriation to USIA for grant.
[8] Appropriation to Secretary of Transportation for grant to Nat'l. Rail Passenger Corp.
[9] Appropriated funds; actual BA is 1,084,178.

APPENDIX D

CHART No. 2

Schedule of Audit Determination and Resolution Status (as of ________ 19__)	Number of audit Reports	Number of audit reports for which determination not made within six months of completion	Amount of ineligible costs	Amount of ineligible costs disallowed	Amount of unsupported costs	Amount of unsupported costs disallowed	Amount of disallowed costs returned to or offset by the Government
A. Audit report completed before start of reporting period, and for which an audit determination:							
- was not made by the end of the reporting period;				XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX		XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX	XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX
- was made during the reporting period, and for which resolution has not occurred;							XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX
- was made during the reporting period, and for which resolution has occurred.							
B. Audit report completed during the reporting period, and for which an audit determination:							
- was not made by the end of the reporting period;				XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX		XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX	XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX
- was made during the reporting period, and for which resolution has not occurred;							XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX
- was made during the reporting period, and for which resolution has occurred.							

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